United Nations

Report of the Committee against Torture

Twenty-fifth session
(13-24 November 2000)
Twenty-sixth session
(30 April-18 May 2001)

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Fifty-sixth Session
Supplement No. 44 (A/56/44)

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 18 May 2001, the closing date of the twenty-sixth session of the Committee against Torture, there were 124 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention are listed in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

2. The text of the declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2/Rev.5. Updated information in that regard may be found in the United Nations Human Rights Web site (www.un.org/human rights/treaties. Sample access - Status of multilateral treaties deposited with the Secretary-General - Chapter IV.9).

B. Opening and duration of the sessions

3. The Committee against Torture has held two sessions since the adoption of its last annual report. The twenty-fifth and twenty-sixth sessions of the Committee were held at the United Nations Office at Geneva from 13 to 24 November 2000 and from 30 April to 18 May 2001.

4. At its twenty-fifth session, the Committee held 18 meetings (439th to 456th meeting) and at its twenty-sixth session, the Committee held 28 meetings (457th to 484th meeting). An account of the deliberations of the Committee at its twenty-fifth and twenty-sixth sessions is contained in the relevant summary records (CAT/C/SR.439-484).

C. Membership and attendance

5. The membership of the Committee remained the same during the period covered by the present report. The list of members, with their terms of office, appears in annex IV to the present report.

6. All the members attended the twenty-fifth and the twenty-sixth sessions of the Committee, except Mr. Silva Henriques Gaspar, who attended one week of the twenty-fifth session.

D. Officers

7. The following members of the Committee acted as officers during the reporting period:

Chairman:	Mr. Peter Burns
Vice-Chairmen:	Mr. Guibril Camara Mr. Alejandro González Poblete Mr. Yu Mengjia
Rapporteur:	Mr. Sayed Kassem El Masry

E. Agendas

8. At its 439th meeting, on 13 November 2000, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/57) as the agenda of its twenty-fifth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.

9. At its 457th meeting, on 18 April 2001, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/62) as the agenda of its twenty-sixth session.

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.

7. Future meetings of the Committee.

8. Action by the General Assembly at its fifty-fifth session.

9. Discussion on the situation of the occupied Palestinian territory in the light of article 16 of the Convention.

10. Annual report of the Committee on its activities.

F. Question of a draft optional protocol to the Convention

10. At the 460th meeting, on 2 May 2001, Mr. Mavrommatis, who had been designated by the Committee as its observer at the inter-sessional open-ended working group of the Commission on Human Rights that is elaborating the protocol, informed the Committee of the progress made by the working group at its ninth session, held at the United Nations Office at Geneva from 12 to 23 February 2001. While welcoming the establishment of national mechanisms for the prevention of torture, the Committee expressed its strong support for the creation of an international mechanism which would carry out visits to places of detention and would apply to all States equally.

G. Cooperation between the Committee and the Board of Trustees of the United Nations Voluntary Fund for the Victims of Torture

11. An informal meeting was held on 18 May 2001 attended by the Chairman of the Committee and two members of the Board of Trustees of the United Nations Voluntary Fund for the Victims of Torture.

H. Contribution to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Twenty-fifth session

12. In its resolution 2000/14, the Commission on Human Rights invited United Nations bodies and mechanisms dealing with the question of racism, racial discrimination, xenophobia and related intolerance to participate actively in the preparatory process of the World Conference. The General Assembly, in its resolution 54/154, also requested human rights mechanisms to assist the Preparatory Committee and to undertake reviews and submit recommendations concerning the World Conference and the preparations therefor to the Preparatory Committee, through the Secretary-General, and to participate actively in the Conference. Accordingly, on 24 November 2000, the Committee adopted a text which was submitted as its contribution to the second Preparatory Committee to the Conference to be held at the United Nations Office at Geneva in May 2001 (see annex X). The Committee also designated Mr. González Poblete, Mr. Camara and Mr. Yu Mengjia as its representatives to the regional preparatory meetings for the World Conference, namely: (a) the Americas (Santiago, 4-7 December 2000); (b) Africa (Dakar, 22-26 January 2001); and (c) Asia

(Tehran, 19-21 February 2001). The Committee further designated Ms. Gaer as its representative to the second session of the Preparatory Committee and its Chairperson as its representative to the World Conference, to be held in Durban, South Africa, from 31 August to 7 September 2001.

I. Methods of work of the Committee: decision to establish a pre-sessional working group

13. The Committee held a preliminary discussion on the possibility of establishing a pre-sessional working group at its twenty-fourth session. It agreed that such a group would facilitate its monitoring activities, in particular with regard to individual communications under article 22 of the Convention.

14. On 22 November 2000, the Committee resumed discussion on the subject and, in accordance with rule 25 of its rules of procedure, heard an oral statement by the secretariat concerning the cost estimates involved in the proposal (see annex VIII). In accordance with rules 61 and 106 of its rules of procedure, the Committee decided to pursue the establishment of the working group starting with the biennium 2002-2003. The group would be composed of four of its members and would meet for a five-day session during the week preceding each Committee session.

15. At its twenty-sixth session the Committee decided to entrust two of its members with the task of revising its rules of procedure and making proposals for possible amendments at the twenty-seventh session.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-FOURTH SESSION

16. The Committee considered this agenda item at its twenty-sixth session.

A. Annual report submitted by the Committee against Torture under article 24 of the Convention

17. The Committee took note of General Assembly resolution 55/89, entitled "Torture and other cruel, inhuman or degrading treatment or punishment", to which are annexed the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

B. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

18. At its twenty-fifth and twenty-sixth sessions, the Committee discussed the possibility of improving its methods of work as a result of the suggestions contained in an informal document submitted by a State party.

19. At its twenty-fifth session the Committee was informed by its Chairman about the outcome of the twelfth meeting of persons chairing the human rights treaty bodies, which had been held at the United Nations Office at Geneva from 5 to 8 June 2000.

20. Also at its twenty-fifth session, Ms. Gaer, Rapporteur on torture and gender issues, and Mr. Gaspar, Rapporteur on children and torture issues, briefed the Committee about developments in those fields.

III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Action taken by the Committee to ensure the submission of reports

21. The Committee considered the status of submission of reports under article 19 of the Convention at its twenty-fifth and twenty-sixth sessions. The Committee had before it the following documents:

(a) Notes by the Secretary-General concerning initial reports of States parties which were due from 1988 to 2001 (CAT/C/5, 7, 9, 12, 16/Rev.1, 21/Rev.1, 24, 28/Rev.1, 32/Rev.2, 37, 42, 47, 52 and 58);

(b) Notes by the Secretary-General concerning second periodic reports which were due from 1992 to 2001 (CAT/C/17, 20/Rev.1, 25, 29, 33, 38, 43, 48, 53 and 59);

(c) Notes by the Secretary-General concerning third periodic reports which were due from 1996 to 2000 (CAT/C/34, 39, 44, 49, 54 and 60);

(d) Notes by the Secretary-General concerning fourth periodic reports which are due in 2001 (CAT/C/55 and 61).

22. The Committee was informed that, in addition to the 14 reports that were considered by the Committee at its twenty-fifth and twenty-sixth sessions (see chap. IV, paras. 77-136), the Secretary-General had received the initial reports of Benin (CAT/C/21/Add.3), Indonesia (CAT/C/47/Add.3), Saudi Arabia (CAT/C/42/Add.2) and Zambia (CAT/C/47/Add.2); the second periodic reports of Uzbekistan (CAT/C/53/Add.1) and Venezuela (CAT/C/33/Add.5); the third periodic reports of Luxembourg (CAT/C/34/Add.14), the Russian Federation (CAT/C/34/Add.15) and Israel (CAT/C/54/Add.1); and the fourth periodic reports of Denmark (CAT/C/55/Add.2), Egypt (CAT/C/55/Add.6), Norway (CAT/C/55/Add.4), Spain (CAT/C/55/Add.5), Sweden (CAT/C/55/Add.3) and Ukraine CAT/C/55/Add.1).

23. In addition, the Committee was informed by the secretariat about the situation of overdue reports. As at 18 May 2001, the situation was as follows:

State party	Date on which the report was due
Initial reports	
Uganda	25 June 1988
Togo	17 December 1988
Guyana	17 June 1989
Guinea	8 November 1990
Somalia	22 February 1991
Estonia	19 November 1992
Yemen	4 December 1992
Bosnia and Herzegovina	5 March 1993
Latvia	13 May 1993
Seychelles	3 June 1993
Cape Verde	3 July 1993
Cambodia	13 November 1993
Burundi	19 March 1994
Antigua and Barbuda	17 August 1994
Ethiopia	12 April 1995
Albania	9 June 1995
Chad	9 July 1996
Republic of Moldova	27 December 1996
Côte d'Ivoire	16 January 1997
Lithuania	1 March 1997
Democratic Republic of the Congo	16 April 1997
Malawi	10 July 1997
Honduras	3 January 1998
Kenya	22 March 1998
Bahrain	4 April 1999
Bangladesh	3 November 1999
Niger	3 November 1999
South Africa	8 January 2000
Burkina Faso	2 February 2000
Mali	27 March 2000
Belgium	25 July 2000
Turkmenistan	25 July 2000
Japan	29 July 2000
Mozambique	14 October 2000
Qatar	9 February 2001
Second periodic reports	
Afghanistan	25 June 1992
Belize	25 June 1992
Philippines	25 June 1992
Uganda	25 June 1992

State party	Date on which the report was due
Second periodic reports (continued)	
Togo	17 December 1992
Guyana	17 June 1993
Turkey	31 August 1993
Brazil	27 October 1994
Guinea	8 November 1994
Somalia	22 February 1995
Romania	16 January 1996
Nepal	12 June 1996
Yugoslavia	9 October 1996
Estonia	19 November 1996
Yemen	4 December 1996
Jordan	12 December 1996
Monaco	4 January 1997
Bosnia and Herzegovina	5 March 1997
Benin	10 April 1997
Latvia	13 May 1997
Seychelles	3 June 1997
Cape Verde	3 July 1997
Cambodia	13 November 1997
Burundi	19 March 1998
Slovakia	27 May 1998
Slovenia	14 August 1998
Antigua and Barbuda	17 August 1998
Armenia	12 October 1998
Costa Rica	10 December 1998
Sri Lanka	1 February 1999
Ethiopia	12 April 1999
Albania	9 June 1999
United States of America	19 November 1999
The former Yugoslav Republic of Macedonia	11 December 1999
Namibia	27 December 1999
Republic of Korea	7 February 2000
Tajikistan	9 February 2000
Cuba	15 June 2000
Chad	8 July 2000
Republic of Moldova	27 December 2000
Côte d'Ivoire	16 January 2001
Lithuania	1 March 2001
Kuwait	6 April 2001
Democratic Republic of Congo	16 April 2001

State party	Date on which the report was due
Third periodic reports	
Afghanistan	25 June 1996
Belize	25 June 1996
Bulgaria	25 June 1996
Cameroon	25 June 1996
France	25 June 1996
Philippines	25 June 1996
Senegal	25 June 1996
Uganda	25 June 1996
Uruguay	25 June 1996
Austria	27 August 1996
Togo	17 December 1996
Colombia	6 January 1997
Ecuador	28 April 1997
Guyana	17 June 1997
Turkey	31 August 1997
Tunisia	22 October 1997
Chile	29 October 1997
Australia	6 September 1998*
Algeria	11 October 1998
Brazil	27 October 1998
Guinea	8 November 1998
New Zealand	8 January 1999
Somalia	22 February 1999
Malta	12 October 1999
Germany	30 October 1999
Liechtenstein	1 December 1999
Romania	16 January 2000
Nepal	12 June 2000
Cyprus	16 August 2000
Venezuela	27 August 2000
Croatia	7 October 2000
Estonia	19 November 2000
Yemen	4 December 2000
Jordan	12 December 2000
Monaco	4 January 2001
Bosnia and Herzegovina	5 March 2001
Benin	10 April 2001
Latvia	13 May 2001

* Requested by the Committee for November 2004.

State party	Date on which the report was due
Fourth periodic reports	
Afghanistan	25 June 2000
Argentina	25 June 2000
Belarus	25 June 2000
Belize	25 June 2000
Bulgaria	25 June 2000
Cameroon	25 June 2000
France	25 June 2000
Hungary	25 June 2000
Mexico	25 June 2000
Philippines	25 June 2000
Russian Federation	25 June 2000
Senegal	25 June 2000
Switzerland	25 June 2000
Uganda	25 June 2000
Uruguay	25 June 2000
Canada	23 July 2000
Austria	27 August 2000
Panama	22 September 2000
Luxembourg	28 October 2000
Togo	17 December 2000
Colombia	6 January 2001
Ecuador	28 April 2001

24. The Committee expressed concern at the number of States parties which did not comply with their reporting obligations. With regard in particular to States parties whose reports were more than four years overdue and to whom several reminders had been sent by the Secretary-General, the Committee deplored the continued failure of those States parties to comply with the obligations they had freely assumed under the Convention. The Committee stressed that it had the duty to monitor the implementation of the Convention and that the non-compliance of a State party with its reporting obligations constituted an infringement of the provisions of the Convention.

25. In this connection, the Committee decided to continue its practice of making available lists of States parties whose reports were overdue during the press conferences that the Committee usually holds at the end of each session.

26. The status of submission of reports by States parties under article 19 of the Convention as at 18 May 2001, the closing date of the twenty-sixth session of the Committee, appears in annex V to the present report.

IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

27. At its twenty-fifth and twenty-sixth sessions, the Committee considered reports submitted by 14 States parties under article 19, paragraph 1, of the Convention. The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its twenty-fifth session:

Armenia: second periodic report	CAT/C/43/Add.3
Belarus: third periodic report	CAT/C/34/Add.12
Australia: second periodic report	CAT/C/25/Add.11
Canada: third periodic report	CAT/C/34/Add.13
Cameroon: second periodic report	CAT/C/17/Add.22
Guatemala: third periodic report	CAT/C/49/Add.2

28. The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its twenty-sixth session:

Georgia: second periodic report	CAT/C/48/Add.1
Greece: third periodic report	CAT/C/39/Add.3
Czech Republic: second periodic report	CAT/C/38/Add.1
Slovakia: initial report	CAT/C/24/Add.6
Bolivia: initial report	CAT/C/52/Add.1
Brazil: initial report	CAT/C/9/Add.16
Costa Rica: initial report	CAT/C/24/Add.7
Kazakhstan: initial report	CAT/C/47/Add.1

29. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered by the Committee sent representatives to participate in the examination of their respective reports.

30. In accordance with the decision taken by the Committee at its fourth session,* country rapporteurs and alternate rapporteurs were designated by the Chairman, in consultation with the members of the Committee and the secretariat, for each of the reports submitted by States parties and considered by the Committee at its twenty-fifth and twenty-sixth sessions. The list of the above-mentioned reports and the names of the country rapporteurs and their alternates for each of them appear in annex VI to the present report.

31. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

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* Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 14-16.

(b) General guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14/Rev.1).

32. In accordance with the decision taken by the Committee at its eleventh session,* the following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain references to the reports submitted by the States parties and to the summary records of the meetings of the Committee at which the reports were considered, as well as the text of conclusions and recommendations adopted by the Committee with respect to the States parties' reports considered at its twenty-fifth and twenty-sixth sessions.

Armenia

33. The Committee considered the second periodic report of Armenia (CAT/C/43/Add.3) at its 440th, 443rd and 447th meetings, held on 14, 15 and 17 November 2000 (CAT/C/SR.440, 443 and 447), and adopted the following conclusions and recommendations.

A. Introduction

34. The Committee notes that the second periodic report of Armenia was not prepared in full conformity with the June 1998 guidelines for the preparation of periodic reports. It nevertheless welcomes with satisfaction the Armenian delegation's oral introduction of the report and willingness to engage in a dialogue.

B. Positive aspects

35. The Committee takes note with satisfaction of the following elements:

(a) Ongoing efforts to establish a legal system based on universal human values in order to safeguard fundamental human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;

(b) The moratorium on the application of the death penalty and the fact that the death penalty is not provided for in the draft Penal Code;

(c) The fact that a person may not be extradited to another State if there are substantial grounds for believing that he would be in danger of being subjected to torture or sentenced to death;

(d) The human rights training programme for government law enforcement officials and, in particular, employees of the Ministry of the Interior and National Security;

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* Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44), paras. 12-13.

(e) Cooperation between government authorities and non-governmental organizations;

(f) The State party's decision to establish the post of Ombudsman.

C. Factors and difficulties impeding the application of the Convention

36. The Committee takes note of the transition problems the State party now faces.

D. Subjects of concern

37. The Committee is concerned about the following:

(a) The fact that the draft Penal Code does not include some aspects of the definition of torture contained in article 1 of the Convention;

(b) The fact that the rights of persons deprived of liberty are not always respected;

(c) The existence of a regime of criminal responsibility for judges who commit errors in their sentences on conviction, since it might weaken the judiciary;

(d) The lack of effective compensation for victims of acts of torture committed by government officials in contravention of the provisions of article 14 of the Convention;

(e) Poor prison conditions and the fact that prisons come under the authority of the Ministry of the Interior;

(f) The ongoing practice of hazing ("dedovshchina") in the military, which has led to abuses and violations of the relevant provisions of the Convention. This practice also has a devastating effect on victims and may sometimes even lead to their suicide.

38. The Committee notes with concern that the State party has not taken account in its second periodic report of the recommendations the Committee made in connection with the initial report of Armenia in April 1996. In particular, it has not communicated the results of the inquiry on the allegations of ill-treatment that were brought to the Committee's attention.

E. Recommendations

39. The Committee makes the following recommendations:

(a) Although Armenian legislation contains various provisions on some aspects of torture as defined by the Convention, the State party must, in order genuinely to fulfil its treaty obligations, adopt a definition of torture which is fully in keeping with article 1 and provide for appropriate penalties;

(b) Counsel, family members and the doctor of their own choice must be guaranteed immediate access to persons deprived of liberty;

(c) While welcoming the plan to transfer responsibility for prison administration from the Ministry of the Interior to the Ministry of Justice, the Committee invites the State party to establish a truly independent and operational system for the inspection of all places of detention, whether Ministry of the Interior, Ministry of Justice or Ministry of Defence facilities;

(d) The Committee recommends that the State parties should conduct impartial investigations without delay into allegations of hazing ("dedovshchina") in the military and institute proceedings in substantiated cases;

(e) The Committee invites the State party to bring the regime of criminal responsibility for judges into line with the relevant international instruments, including the Basic Principles on the Independence of the Judiciary adopted in 1985 and the Guidelines on the Role of Prosecutors adopted in 1990;

(f) The Committee encourages the State party to continue education and training activities on the prevention of torture and the protection of individuals from torture and ill-treatment for police and for the staff of prisons, including Ministry of the Interior facilities and military prisons;

(g) The Committee recommends that, as soon as possible the State party should adopt the draft Penal Code, which abolishes the death penalty, in order to resolve the situation of the many persons who have been sentenced to death and who are being kept in uncertainty amounting to cruel and inhuman treatment in breach of article 16 of the Convention;

(h) The Committee would like to receive information concerning the recommendations it made in connection with Armenia's initial report, particularly those concerning the allegations of ill-treatment which were brought to its attention and were to be the subject of an immediate and impartial inquiry whose results were to be transmitted to the Committee;

(i) The Committee invites the State party to include the necessary statistics, disaggregated by gender and geographical region, in the next report to be submitted in October 2002;

(j) The Committee encourages the State party to make the declarations provided for in articles 21 and 22 of the Convention.

Belarus

40. The Committee considered the third periodic report of Belarus (CAT/C/34/Add.12) at its 442nd, 445th and 449th meetings, held on 15, 16 and 20 November 2000 (CAT/C/SR.442, 445 and 449), and adopted the following conclusions and recommendations.

A. Introduction

41. The Committee welcomes the third periodic report of Belarus, although it notes that the report, due in June 1996, was submitted with three years' delay. It also notes that the report was not submitted in conformity with the guidelines for the preparation of State party periodic reports. The Committee regrets that the report lacked detailed information on the implementation of the Convention in practice, but wishes to express its appreciation for the extensive and informative oral update given by the representative of the State party during the consideration of the report.

B. Positive aspects

42. The Committee welcomes the information presented by the representatives of the State party that the Government of Belarus has decided to withdraw its reservation to article 20 of the Convention regarding the inquiry procedure.

43. The Committee notes the cooperation of the Government of Belarus with United Nations treaty bodies and other human rights mechanisms, particularly in permitting the visits of the Special Rapporteur on freedom of opinion and expression and, recently, the Special Rapporteur on the independence of the judiciary.

44. The Committee welcomes the information given by the representatives of the State party that the Government of Belarus has decided to accede to the 1951 Convention relating to the Status of Refugees.

C. Subjects of concern

45. The Committee expresses concern about the following:

(a) The deterioration of the human rights situation in Belarus since the consideration of its second periodic report in 1992, including persistent abrogations of the right to freedom of expression, such as limitations of the independence of the press, and of the right to peaceful assembly, which create obstacles for the full implementation of the Convention;

(b) The absence of a definition of torture, as provided in article 1 of the Convention, in the Criminal Code of the State party and the lack of a specific offence of torture, with the result that the offence of torture is not punishable by appropriate penalties, as required in article 4, paragraph 2, of the Convention;

(c) The numerous continuing allegations of torture and other cruel, inhuman and degrading punishment or treatment, committed by officials of the State party or with their acquiescence, particularly affecting political opponents of the Government and peaceful demonstrators, and including disappearances, beatings and other actions in breach of the Convention;

(d) The lack of an independent procuracy, in particular as the Procurator has the competence to exercise oversight on the appropriateness of the duration of pre-trial detention, which can be for a period of up to 18 months;

(e) The pattern of failure of officials to conduct prompt, impartial and full investigations into the many allegations of torture reported to the authorities, as well as a failure to prosecute alleged perpetrators, which are not in conformity with articles 12 and 13 of the Convention;

(f) The lack of an independent judiciary, with the President of the State party maintaining the sole power to appoint and dismiss from office most judges, who must also pass a probationary initial term and whose tenure lacks certain necessary safeguards;

(g) Presidential Decree No. 12, which restricts the independence of lawyers, subordinating them to the control of the Ministry of Justice and introducing obligatory membership in a State-controlled Collegium of Advocates, in direct contravention of the United Nations Basic Principles on the Role of Lawyers;

(h) The overcrowding, poor diet and lack of access to facilities for basic hygiene and adequate medical care, as well as the prevalence of tuberculosis, in prisons and pre-trial detention centres;

(i) The continuing use of the death penalty, and the inadequate procedures for appeals, lack of transparency about those being held on death row and the reported refusal to return the bodies of those executed to their relatives, inhibiting any investigation into charges of torture or ill-treatment in prison.

D. Recommendations

46. The Committee recommends that:

(a) The State party amend its domestic penal law to include the crime of torture, consistent with the definition contained in article 1 of the Convention and supported by an adequate penalty;

(b) Urgent and effective steps be taken to establish a fully independent complaints mechanism, to ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of the alleged perpetrators;

(c) The State party consider establishing an independent and impartial governmental and non-governmental national human rights commission with effective powers to, inter alia, promote human rights and investigate all complaints of human rights violations, in particular those pertaining to the implementation of the Convention;

(d) Measures be taken, including the review of the Constitution, laws and decrees, to establish and ensure the independence of the judiciary and lawyers in the performance of their duties, in conformity with international standards;

(e) Efforts be made to improve conditions in prisons and pre-trial detention centres, and that the State party establish a system allowing for inspections of prisons and detention centres by credible impartial monitors, whose findings should be made public;

(f) Provide independent judicial oversight of the period and conditions of pre-trial detention;

(g) The State party consider making the appropriate declarations under articles 21 and 22 of the Convention;

(h) The Committee's conclusions and recommendations, and the summary records of the review of the State party's third periodic report, be widely distributed in the country, including by publication in both the Government-controlled and independent media.

Australia

47. The Committee considered the second report of Australia (CAT/C/25/Add.11) at its 444th, 447th, and 451st meetings, on 16, 17 and 21 November 2000 (CAT/C/SR.444, 447 and 451), and adopted the following conclusions and recommendations.

A. Introduction

48. The Committee notes that the report was submitted with a delay of six years and was said to be the combined second and third periodic reports, the latter of which was due in 1998. The Committee welcomes the constructive dialogue with the delegation of Australia and greatly appreciates the lengthy and detailed information submitted both orally and in writing, which not only updated the report, which included information only until 1997, but also contained specific reference to each component part of the Australian federation, referred to factors and difficulties affecting the federation and gave answers to nearly all specific cases referred to it.

49. The Committee wishes to express its appreciation for the additional information submitted in 1992 (CAT/C/9/Add.11) in response to questions asked during the examination of the initial report of Australia.

50. The Committee also expresses its appreciation for the contribution of non-governmental organizations and statutory agencies to its work in considering the State party's report.

B. Positive aspects

51. The Committee particularly welcomes the following:

(a) The declarations made by Australia on 28 January 1993, under articles 21 and 22 of the Convention, and its ratification of the Optional Protocol to the International Covenant on Civil and Political Rights;

(b) The many investigations and inquiries that have been undertaken by, inter alia, Royal Commissions of inquiry, parliamentary committees, the Human Rights and Equal Opportunity Commission, ombudspersons and other ad hoc bodies, at both the federal and state levels, on matters of relevance to the implementation of the Convention;

(c) The consultations with national non-governmental organizations that took place during the preparation of the report;

(d) The information contained in the report about the expansion of the rehabilitation services available for victims of torture, and the contributions of the State party to the United Nations Voluntary Fund for the Victims of Torture;

(e) The measures taken to address the historical social and economic underpinnings of the disadvantage experienced by the indigenous population;

(f) The establishment of the independent statutory office of the Inspector of Custodial Services.

C. Subjects of concern

52. The Committee expresses its concern about the following:

(a) The apparent lack of appropriate review mechanisms for ministerial decisions in respect of cases coming under article 3 of the Convention;

(b) The use by prison authorities of instruments of physical restraint that may cause unnecessary pain and humiliation;

(c) Allegations of excessive use of force or degrading treatment by police forces or prison guards;

(d) Allegations of intimidation and adverse consequences faced by inmates who complain about their treatment in prisons;

(e) Legislation imposing mandatory minimum sentences, which has allegedly had a discriminatory effect regarding the indigenous population (including women and juveniles), who are over-represented in statistics for the criminal justice system.

D. Recommendations

53. The Committee recommends that:

(a) The State party ensure that all States and territories are at all times in compliance with its obligations under the Convention;

(b) The State party consider the desirability of providing a mechanism for independent review of ministerial decisions in respect of cases coming under article 3 of the Convention;

(c) The State party continue its education and information efforts for law enforcement personnel regarding the prohibition against torture and further improve its efforts in training, especially of police, prison officers and prison medical personnel;

(d) The State party keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that their use is appropriately recorded;

(e) The State party ensure that complainants are protected against intimidation and adverse consequences as a result of their complaint;

(f) The State party continue its efforts to reduce overcrowding in prisons;

(g) The State party continue its efforts to address the socio-economic disadvantage that, inter alia, leads to a disproportionate number of indigenous Australians coming into contact with the criminal justice system;

(h) The State party keep under careful review legislation imposing mandatory minimum sentences, to ensure that it does not raise questions of compliance with its international obligations under the Convention and other relevant international instruments, particularly with regard to the possible adverse effect upon disadvantaged groups;

(i) The State party submit its next periodic report by November 2004, and ensure that it contains information on the implementation of the present recommendations and disaggregated statistics.

Canada

54. The Committee considered the third periodic report of Canada (CAT/C/34/Add.13) at its 446th, 449th and 453rd meetings, held on 17, 20 and 22 November 2000 (CAT/C/SR.446, 449 and 453), and adopted the following conclusions and recommendations.

A. Introduction

55. The Committee welcomes the third periodic report of Canada which, although submitted with a delay of three years, conforms to the guidelines for the preparation of State party periodic reports. The Committee particularly appreciates the detailed statistical and other information responding to the Committee's requests during the review of the second periodic report. The Committee welcomes the constructive dialogue with the delegation and the frank and forthright replies furnished by the delegation to the issues raised by the Committee, including the written materials provided.

56. The Committee further welcomes the assurances of the State party of the seriousness with which it regards requests by the Committee for interim measures in individual cases under article 22. The Committee recalls that the State party asked the Committee to oversee its methods of work to ensure non-extendable time limits for the review of individual complaints. The Committee once again underlines that the time limits provided by its rules of procedure are established to allow States parties to submit full responses to allegations made and the Committee to do an in-depth examination.

B. Positive aspects

57. The Committee welcomes the following:

(a) The extensive legal protection against torture and other cruel, inhuman or degrading treatment or punishment that exists in the State party and the efforts pursued by the authorities to achieve transparency of its institutions and practices;

(b) The entry into force of new legislation, the Crimes against Humanity and War Crimes Act, which overcomes many of the obstacles to the prosecution of persons accused of these crimes that were posed by the Finta case,[1] and the ratification of the Statute of the International Criminal Court;

(c) The systematic review, beginning in December 1999, of all allegations against individuals involved in genocide, war crimes and crimes against humanity;

(d) The introduction of proposed legislation under which the criteria for granting refugee protection would include grounds outlined in the Convention;

(e) The appointment of a Correctional Investigator, independent of the Corrections Service, to act as an ombudsman for detained federal offenders, and the establishment of a Human Rights Division in the Correctional Service of Canada to assist in monitoring and evaluating policies and practices and to strengthen a human rights culture;

(f) The development of a national strategy on aboriginal corrections and other measures taken to address the historical social and economic disadvantages experienced by the indigenous population;

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[1] R. v. Finta [1994] 1 S.C.R. 701.

(g) The policy of the State party to seek the views of non-governmental organizations in preparing its reports to the Committee, and its assurances that "criticisms and concerns" of such organizations will be explicitly included in the next report by the State party;

(h) The increase in the State party's contribution to the United Nations Voluntary Fund for the Victims of Torture and the continued support to national rehabilitation centres for torture victims.

C. Subjects of concern

58. The Committee expresses concern about the following:

(a) Allegations of actions not in conformity with the Convention, including the inappropriate use of pepper spray and force by police authorities to break up demonstrations and restore order, notably with regard to the demonstrations surrounding the 1997 summit meeting of the Asia-Pacific Economic Cooperation (APEC) forum;

(b) Allegations that female detainees have been treated harshly and improperly by the authorities of the State party, and that many recommendations of the Arbour report[2] have yet to be implemented;

(c) Allegations of the use of undue force and involuntary sedation in the removal of rejected asylum-seekers;

(d) The over-representation of aboriginal people in prison throughout the criminal justice system in the State party;

(e) The position of the State party in arguments before courts, and in policies and practices, that when a person is considered a serious criminal or a security risk, he/she can be returned to another State even where there are substantial grounds for believing that the individual would be subjected to torture, an action which would not be in conformity with the absolute character of the provisions of article 3, paragraph 1, of the Convention;

(f) The public danger risk assessment carried out without interview or transparency prior to the refugee determination procedure, and that persons considered to be a security risk are not eligible to have their cases examined in depth under the normal refugee determination procedure. In addition, the Committee notes that at present both the review of security risk and the review of the existence of humanitarian and compassionate grounds are carried out by the same governmental body; the Committee is also concerned that the alleged lack of independence of decision-makers, as well as the possibility that a person can be removed while an application for humanitarian review is under way, may constitute obstacles to the effectiveness of the remedies to protect the rights in article 3, paragraph 1, of the Convention;

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[2] Commission of Inquiry into Certain Events at the Prison for Women at Kingston, Commissioner: The Honourable Louise Arbour, Canada, 1996.

(g) The lack of adequate measures taken with regard to breaches of the norms of the Convention as required by article 7, paragraph 1;

(h) Notwithstanding the new War Crimes and Crimes against Humanity Bill and the assurances of the State party, the possibility that an accused torturer could still plead a number of defences that would grant him/her immunity, including that foreign proceedings had been conducted for the purpose of shielding the accused from criminal responsibility; that the offence was committed in obedience of the law in force at the time; or that the accused had a motivation other than an intention to be inhumane.

D. Recommendations

59. The Committee recommends that the State party:

(a) Comply fully with article 3, paragraph 1, of the Convention prohibiting return of a person to another State where there are substantial grounds for believing that the individual would be subjected to torture, whether or not the individual is a serious criminal or security risk;

(b) Enhance the effectiveness of the remedies to protect the rights granted by article 3, paragraph 1, of the Convention. Noting the assurances that the proposed new Immigration and Refugee Act provides for a pre-removal risk assessment "available to all persons under a removal order", the Committee encourages the State party to ensure that the proposed new legislation permits in-depth examination by an independent entity of claims, including those from persons already assessed as security risks. The Committee urges the State party to ensure that obstacles to the full implementation of article 3 are removed, so that an opportunity is given to the individual concerned to respond before a security risk decision is made, and that assessments of humanitarian and compassionate grounds are made without demanding a fee from a person who seeks protection.

(c) Prosecute every case of alleged torture in a territory under its jurisdiction where it does not extradite the alleged torturer and the evidence warrants it, and prior to any deportation;

(d) Remove from current legislation the defences that could grant an accused torturer immunity;

(e) Consider the creation of a new investigative body for receiving and investigating complaints regarding the Convention, such as those pertaining to the subjects of concern cited above, including allegations relating to members of the indigenous population;

(f) Continue and enhance training of military personnel on the standards required by the Convention and related human rights matters, including those regarding discriminatory treatment;

(g) Submit its fourth periodic report, which was due in July 2000, in the most timely manner possible.

Cameroon

60. The Committee considered the second periodic report of Cameroon (CAT/C/17/Add.22) at its 448th, 451st and 454th meetings, held on 20, 21 and 23 November 2000 (CAT/C/SR.448, 451 and 454), and adopted the following conclusions and recommendations.

A. Introduction

61. The Committee expresses its appreciation for the submission of the report of Cameroon, which covers the period until the end of 1996. The report, which was submitted seven years late, was prepared in conformity with the guidelines for the preparation of periodic reports.

62. The Committee also expresses its appreciation to the delegation of Cameroon for its professionalism and the diligence with which it provided detailed replies to the questions asked by the Committee, thereby demonstrating the interest taken by the State party in the work of the Committee.

B. Positive aspects

63. The Committee takes note with satisfaction of the following elements:

(a) The remarkable efforts made by the State party to carry out far-reaching reforms of its legislation and practice in order to fulfil its obligations under the Convention;

(b) The agreement to receive the visit of the Special Rapporteur on the question of torture, who was able to complete his mission unhindered;

(c) The willingness of the State party to allow International Committee of the Red Cross (ICRC) inspectors to visit places of detention on their own terms;

(d) The scrupulous respect shown by the courts and political authorities in Cameroon for the State party's obligations under article 3 of the Convention, thus ensuring that a person was not extradited to a country where he was in danger of being subjected to torture or sentenced to death;

(e) Cooperation with the International Criminal Tribunal for Rwanda in the extradition of some indicted persons to Arusha;

(f) The promise by the representatives of the State party to permit the National Commission on Human Rights to visit detention centres on the terms recommended by the Special Rapporteur;

(g) The State party's decision to make the declarations provided for in articles 21 and 22 of the Convention;

(h) The initiation of a process for the ratification of the Statute of the International Criminal Court;

(i) The State party's recent contribution to the United Nations Voluntary Fund for Victims of Torture.

C. Factors and difficulties impeding the application of the Convention

64. The Committee is aware of the range of difficulties experienced by the State party, including those of an economic nature, which have led to a considerable reduction in its financial resources. It nevertheless points out that no exceptional circumstances of any kind can be invoked to justify torture.

D. Subjects of concern

65. The Committee is concerned about the following:

(a) The fact that, despite the policy pursued by the Government, torture seems to remain a widespread practice;

(b) The continuing practice of administrative detention, which allows the authorities reporting to or forming part of the executive branch (the Ministry of the Interior) to violate individual liberty, something which, under the rule of law, should come under the jurisdiction of the judiciary;

(c) The gap between the adoption of rules in accordance with human rights standards, including those designed to prevent the practice of torture, and the findings made in situ by an independent entity such as the Special Rapporteur on the question of torture, who reports the existence of numerous cases of torture;

(d) The imbalance between the large number of allegations of torture or ill-treatment and the small number of prosecutions and trials;

(e) The absence of legislative provisions for the compensation and rehabilitation of victims of torture, contrary to the provisions of article 14 of the Convention;

(f) The absence of legislative provisions rendering evidence obtained through torture inadmissible, pursuant to article 15 of the Convention;

(g) The fact that security considerations seem to be given precedence over all other matters, including the prohibition of torture;

(h) The maintenance of the prison administration under the authority of the Ministry of the Interior;

(i) The many human rights violations attributable to two special forces, the Operational Command and the Task Force of the National Gendarmerie.

E. Recommendations

66. The Committee recommends that the State party:

(a) Introduce a mechanism into its legislation for the fullest possible compensation and rehabilitation of the victims of torture;

(b) Introduce provisions into its legislation on the inadmissibility of evidence obtained through torture, except in the case of acts carried out against the perpetrator of torture in order to prove that an act of torture has been committed;

(c) Take advantage of the process of codification already under way to bring Cameroonian legislation into line with the provisions of articles 5, 6, 7 and 8 of the Convention;

(d) Ensure the effective implementation of the instructions from the Minister of Justice that pre-trial detention must take place only when absolutely necessary and that provisional release should be the rule, especially since this could help to deal with the problem of prison overcrowding;

(e) Consider transferring responsibility for prison administration from the Ministry of the Interior to the Ministry of Justice;

(f) Consider abolishing the special forces established to combat highway robbery, while at the same time lifting the freeze on the recruitment of law enforcement officials;

(g) Pursue energetically any inquires already under way into allegations of human rights violations and, in cases which have yet to be investigated, give the order for prompt and impartial inquiries to be opened and inform the Committee of the results;

(h) Ensure scrupulous respect for the human rights of persons arrested in the context of efforts to combat highway robbery;

(i) Pursue the training programme for law enforcement personnel in human rights, with particular reference to the prohibition of torture;

(j) Consider establishing a regular system to assess the effectiveness of the implementation of legislation on the prohibition of torture, for instance by making the best use of the National Committee on Human Rights and non-governmental human rights organizations;

(k) Scrupulously maintain a registry of detained persons and make it publicly accessible.

Guatemala

67. The Committee considered the third periodic report of Guatemala (CAT/C/49/Add.2) at its 450th, 453rd and 456th meetings, held on 21, 22 and 24 November 2000 (CAT/C/SR.450, 453 and 456), and adopted the following conclusions and recommendations.

A. Introduction

68. The Committee notes that although Guatemala has been a State party to the Convention since 5 January 1990 it has not made the declarations provided for in articles 21 and 22 of the Convention, and that it is also a party to the Inter-American Convention to Prevent and Punish Torture.

69. The report, submitted on 3 February 2000 and covering the period from 1 April 1998 to 31 December 1999, was updated by the head of the delegation of Guatemala in his introduction. The report generally follows the Committee's guidelines for the form and contents of periodic reports.

70. The Committee thanks the delegation for its replies and for its frankness and cooperation during the dialogue.

B. Positive aspects

71. The Committee takes note with satisfaction of the following positive aspects:

(a) The announcement by the President of Guatemala, repeated by the head of the delegation during his introduction, that the question of human rights will figure prominently in government policy and that there is an acknowledged need to transform the administration of justice and put an end to impunity;

(b) The recognition by the State of its responsibility in emblematic cases of human rights violations substantiated under the inter-American system for the protection of human rights, and the announcement of willingness likewise to recognize its responsibility in other pending cases;

(c) The adoption of the Career Judicial Service Act, which governs the activities of judges and magistrates with a view to protecting their independence and ensuring professional excellence in the exercise of their functions;

(d) The consolidation of the College of Legal Studies as an initial in-service training institution responsible for the objective and impartial selection of new members of the judiciary;

(e) The demobilization of the Treasury Police and conclusion of the process of constituting a single National Civil Police;

(f) The establishment within the Office of the Procurator for Human Rights of the Office of the Ombudsman for Prisoners and Due Process, which is authorized to monitor judicial and prison officials in order to protect individuals in situations where violations of human rights and judicial guarantees frequently occur;

(g) The conclusion by the Government and the United Nations Human Rights Verification Mission in Guatemala of an agreement on the implementation of the Prison Modernization Programme and, as part of the Programme, the opening of the Penitenciary System College in November 1999;

(h) The decision by the Government, announced to the Committee by the President of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) and head of the delegation, to propose amendments to articles 201 bis and 425 of the Penal Code in order to define the offence of torture in terms that are fully in accordance with article 1 of the Convention.

C. Factors and difficulties impeding the application of the Convention

72. The Committee points to the existence of the following:

(a) The increase in acts of intimidation, harassment and death threats against judges, prosecutors, complainants, witnesses and members of human rights bodies and victims' and journalists' organizations, which continue to prevent the submission of complaints of human rights violations and to impede progress in politically sensitive cases involving members of the military or government officials and relating to the organization and activities of the intelligence services. The fear to which such acts give rise seriously affects the freedom of action of individuals and organizations involved in the protection of human rights, as well as the autonomy of the administration of justice;

(b) Legislative provisions which allow the army to take part in public security and crime prevention activities and which hinder the demilitarization of society, weaken the civil power of the State, and are a legacy of the militarization of the country during the armed conflict;

(c) The repeated protection of persons responsible for human rights violations by their superiors, made possible by the lack of administrative investigations and the failure to adopt the necessary disciplinary measures, who in some cases themselves acquiesced or even directly participated in the commission of violations;

(d) Parallel investigations tacitly authorized or agreed to by the State and conducted by government bodies not legally authorized to do so or by clandestine structures in cases of human rights violations in which responsibility is attributed to government officials; these parallel investigations jeopardize the autonomy and independence of the judiciary and the Public Prosecutor's Office and defeat the purpose of and hamper investigations of these crimes;

(e) The lack of statistics on the prison population disaggregated by ethnic group which might show that persecution in prison is based on racial discrimination;

(f) The inadequacy of the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice in providing effective protection and security for persons involved, in various capacities, in criminal proceedings. The Committee recalls that in its observations on the second periodic report, it drew attention to the impact of such inadequacy on continuing impunity and pointed out that the protection of victims and witnesses is a duty imposed on the State by article 13 of the Convention.

D. Subjects of concern

73. The Commission expressed concern with respect to:

(a) The deterioration of the human rights situation in Guatemala and, in particular, the increase in proven cases of torture and other cruel, inhuman and degrading treatment or punishment as compared with the situation at the time the Committee considered the second periodic report. The fact that the main perpetrators of these violations are officials of the National Civil Police, particularly its Criminal Investigations Service, has frustrated hopes that a renewed, single police institution under civilian command would not have the defects that characterized police bodies in the past;

(b) The continuing existence of impunity for offences in general and for human rights violations in particular, as a result of repeated dereliction of duty by the government bodies responsible for preventing, investigating and punishing such offences. Impunity exists for most of the violations committed during the internal armed conflict and those committed after the Peace Agreements were signed;

(c) Serious quantitative and qualitative shortcomings in the system of the administration of justice with regard to criminal investigations and guarantees of due legal process;

(d) The inadequate definition of the offence of torture in article 201 bis of the Penal Code, as already pointed out by the Committee during its consideration of the second periodic report;

(e) The lack of an independent commission with wide powers and extensive resources to investigate the circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains. Uncertainty about these circumstances causes the families of disappeared persons serious and continuous suffering;

(f) The lack of systematic procedures for the periodic review of the practical implementation of the rules, instructions, methods and practices governing interrogation and the arrangements for the treatment of persons deprived of their liberty. The treatment of persons detained in prison, including high security prisons, must be in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

E. Recommendations

74. The Committee recalls that the initial report was considered at a time when the armed conflict taking place and the second, when the Peace Agreements had just been concluded. The third was considered four years after the conclusion of the Peace Agreements. The Committee nevertheless must reiterate most of the recommendations made following its consideration of the preceding reports.

75. The Committee reiterates the following recommendations:

(a) The relevant provisions of the Penal Code, especially articles 201 bis and 425, should be amended to bring the definition of the offence of torture and its punishment into line with articles 1 and 4 of the Convention;

(b) Sufficient human and material resources should be provided to enable the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice to operate effectively;

(c) Technical training programmes for law enforcement officials, prosecutors, judges and National Civil Police officials, with particular emphasis on their obligation to respect and protect human rights, should be continued;

(d) Bearing in mind that, during the introduction of the initial report and the second periodic report, the representatives of Guatemala said that the process leading up to the formulation of the declaration under article 22 of the Convention had begun, a statement repeated during the consideration of the third report, the Committee invites Guatemala to make the declaration in question.

76. The Committee recommends:

(a) The system of the administration of justice should be modernized and measures adopted to eliminate its weaknesses and shortcomings and to strengthen the autonomy and independence of the judiciary and the Public Prosecutor's Office, including those already recommended by the Historical Clarification Commission and the Commission for the Modernization of Justice;

(b) The provisions authorizing the army's involvement in public security and crime prevention, which should be the exclusive prerogative of the police, should be repealed;

(c) Independent external bodies and procedures should be established to monitor the conduct of National Civil Police officials, with broad powers to investigate and impose disciplinary penalties, without prejudice to the powers of the Public Prosecutor's Office to investigate and of the courts to punish misconduct constituting a crime;

(d) All government bodies not authorized to conduct investigations into criminal matters should be strictly prohibited from doing so;

(e) An independent commission should be established to investigate the circumstances of the kidnapping of disappeared persons and to determine what happened to them and where their remains are located. The Government has an obligation to spare no effort to find out what really happened in such cases and thus give effect to the legitimate right of the families concerned, provide compensation for the loss or injury caused and prosecute the persons responsible;

(f) Procedures should be established for the systematic and periodic review of the rules, instructions, methods and practices governing interrogation, as provided for in article 11 of the Convention.

Georgia

77. The Committee considered the second periodic report of Georgia (CAT/C/48/Add.1) at its 458th, 461st and 467th meetings, held on 1, 2 and 7 May 2001 (CAT/C/SR.458, 461 and 467), and adopted the following conclusions and recommendations.

A. Introduction

78. The Committee welcomes the second periodic report of Georgia and the opportunity to have a dialogue with the delegation. It greatly appreciates the extensive additional update provided by the delegation of Georgia both orally and in writing during the consideration of the report.

B. Positive aspects

79. The Committee takes note with satisfaction of the following elements:

(a) The ongoing efforts by the State party to reform the legal system and revise its legislation, including a new code of criminal procedure and criminal code, based on universal human values in order to safeguard fundamental human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;

(b) The submission by the State party of a core document, as requested by the Committee during consideration of the initial report;

(c) The transfer of the prison service from the control of the Ministry of the Interior to the Ministry of Justice, as recommended by the Committee;

(d) The information provided by the representatives of the State party that the Government of Georgia proposes to make declarations recognizing the competence of the Committee under articles 21 and 22 of the Convention.

C. Factors and difficulties impeding the application of the Convention

80. The Committee takes note of the problems and difficulties faced by the State party owing to the secessionist conflicts in Abkhazia and South Ossetia following independence and the resulting internal and external mass displacement of a large number of the population, which has created the increased risk of human rights violations in that part of the territory.

D. Subjects of concern

81. The Committee expresses concern about the following:

(a) The admitted continuing acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in Georgia committed by law-enforcement personnel;

(b) The failure to provide in every instance prompt, impartial and full investigations into the numerous allegations of torture, as well as insufficient efforts to prosecute alleged offenders in non-compliance with articles 12 and 13 of the Convention, resulting in a state of impunity of alleged offenders;

(c) Amendments to the new Code of Criminal Procedure in May and July 1999 shortly after its entry into force, compromising some of the human rights protections previously provided for in the Code, particularly the right of judicial review of complaints of ill-treatment;

(d) The instances of mob violence against religious minorities, in particular Jehovah's Witnesses, and the failure of the police to intervene and take appropriate action, despite the existence of the legal tools to prevent and prosecute such acts, and the risk of this apparent impunity resulting in such acts becoming widespread;

(e) The lack of adequate access for persons deprived of liberty to counsel and doctors of their choice as well as visits of family members;

(f) Certain powers of the procuracy and the problems created by its methods of functioning, which raise serious concerns regarding the existence of an independent mechanism to hear complaints, as well as doubts as to the objectivity of the procuracy of the courts and medical experts;

(g) The unacceptable conditions in prisons, which may violate the rights of persons deprived of their liberty as contained in article 16.

E. Recommendations

82. The Committee recommends that:

(a) The State party amend its domestic penal law to include a definition of torture which is fully consistent with the definition contained in article 1 of the Convention, and provide for appropriate penalties;

(b) In view of the numerous allegations of torture and ill-treatment by law-enforcement personnel, the State party take all necessary effective steps to prevent the crime of torture and other acts of cruel and inhuman or degrading treatment or punishment;

(c) Measures be taken to ensure that all persons deprived of their liberty or arrested by law-enforcement officials: (i) are informed promptly of their rights, including the right to complain to the authorities about ill-treatment, the right to be informed promptly of the charges against them and the right to counsel and a doctor of their choice; (ii) have prompt access to counsel and a doctor of their choice, as well as to family members;

(d) The State party desist from the practice by its law-enforcement officers of characterizing suspects under detention as witnesses, which has had the effect of denying them the right to have the assistance of a lawyer;

(e) In order to ensure that perpetrators of torture do not enjoy impunity, urgent steps be taken to: (i) establish an effective and independent complaints mechanism; (ii) make provisions for the systematic review of all convictions based upon confessions that may have been obtained through torture; (iii) make adequate provisions for compensation and rehabilitation of victims of torture;

(f) Urgent measures be taken to improve conditions of detention in police and prison establishments;

(g) Concrete measures be taken to reform the procuracy in line with the reform of the judicial system and to ensure the full implementation of the legal provisions safeguarding human rights in practice;

(h) In view of the insufficiency of statistical information available to the Committee during consideration of the report, the State party provide the Committee in its next periodic report with appropriate, comprehensive statistics disaggregated by gender, ethnicity and geographical region, as well as by complaint, type of prosecution and results, including all criminal offences relevant to the punishment of torture and other acts of cruel, inhuman or degrading treatment or punishment;

(i) Steps be taken to continue education and training activities on the prevention of torture and the protection of individuals from torture and ill-treatment for police and for the staff of prisons, as well as for forensic experts and medical personnel in prisons, in examining victims of torture and documenting acts of torture;

(j) Effective measures be taken to prosecute and punish violence against women as well as trafficking in women, including adopting appropriate legislation, conducting research and raising awareness of the problem as well as including the issue in the training of law-enforcement officials and other relevant professional groups;

(k) The Committee's conclusions and recommendations and the summary records of the review of the State party's second periodic report be widely disseminated in the country.

Greece

83. The Committee considered the third periodic report of Greece (CAT/C/39/Add.3) at its 460th, 463rd and 469th meetings, held on 2, 3 and 8 May 2001 (CAT/C/SR.460, 463 and 469), and adopted the following conclusions and recommendations.

A. Introduction

84. The Committee welcomes the third periodic report of Greece, although it notes that the report, due in November 1997, was submitted with two years' delay.

85. The report does not fully conform with the Committee's guidelines for the preparation of State party periodic reports as it fails to include new relevant case law and details of complaints regarding alleged acts of torture and other cruel, inhuman or degrading treatment or punishment. The Committee nevertheless wishes to express its appreciation for the additional oral information given by the State party delegation.

B. Positive aspects

86. The Committee particularly welcomes the following:

(a) The existing legal framework and array of institutions in place for the protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) The adoption of Act 2298/95 establishing new institutions to guarantee the rights of prisoners;

(c) The use of specially trained personnel from outside the prison service, and under the supervision of the Public Prosecutor, to intervene in cases of serious disorder in prisons;

(d) The assurances received that the head of delegation will recommend the publication by the responsible State party authorities of the 1996 and 1997 reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visits to Greece;

(e) The State party's ongoing contributions to the United Nations Voluntary Fund for the Victims of Torture.

C. Subjects of concern

87. The Committee expresses concern that, although the domestic legislation provides a satisfactory framework for protecting human rights in general and of certain Convention rights in particular, difficulties in effective implementation, which may amount to a breach of the Convention remain, including the following:

(a) Evidence that the police sometimes use excessive or unjustifiable force in carrying out their duties, particularly when dealing with ethnic and national minorities and foreigners;

(b) The harsh conditions of detention in general and, in particular, the long-term detention of undocumented migrants and/or asylum-seekers awaiting deportation in police stations without adequate facilities;

(c) The severe overcrowding in prisons, which aggravates the already substandard material conditions and may contribute to inter-prisoner violence;

(d) The lack of comprehensive training of medical personnel and law-enforcement officers at all levels on the provisions of the Convention.

D. Recommendations

88. The Committee recommends that:

(a) Urgent measures be taken to improve conditions of detention in police stations and prisons and that undocumented migrants and/or asylum-seekers who have not been convicted of a criminal offence not be held for long periods in such institutions;

(b) Such measures as are necessary to prevent overcrowding of prisons should be taken as well as continuing steps to find alternative penalties to imprisonment and to ensure their effective implementation;

(c) Such measures as are necessary, including training, be taken to ensure that in the treatment of vulnerable groups, in particular foreigners and ethnic and national minorities, law enforcement officers do not resort to discriminatory practices;

(d) Steps be taken to prevent and punish trafficking of women and other forms of violence against women;

(e) Steps be taken to create detention facilities for undocumented migrants and/or asylum-seekers separate from prison or police institutions, and urges the State party to complete its proposed new building construction for aliens as a matter of urgency;

(f) The next report of the State party, due in November 2001, be submitted in accordance with the Committee's guidelines for the preparation of periodic reports and include, inter alia: (i) requested statistics disaggregated by gender, age and nationality; (ii) relevant case law; (iii) comprehensive information relating to articles 3, 4, 12, 13 and 16 of the Convention.

Bolivia

89. The Committee considered Bolivia's initial report (CAT/C/52/Add.1) at its 462nd, 465th and 472nd meetings, held on 3, 4 and 10 May 2001 (CAT/C/SR.462, 465 and 472), and adopted the following conclusions and recommendations.

A. Introduction

90. The Committee welcomes the initial report of Bolivia, which was submitted within the time limit established by the Convention. Bolivia acceded to the Convention on 12 April 1999 without making any reservations. It has not made the declarations provided for in articles 21 and 22.

91. The report was not drafted in accordance with the guidelines for the preparation of reports by States parties. Nevertheless, the Committee is grateful for the additional information provided by the representatives of the State party in the oral presentation, and for the open and constructive dialogue with those representatives.

B. Positive aspects

92. The Committee notes with satisfaction:

(a) The adoption of a new Code of Criminal Procedure, to enter into force shortly, and of the Public Prosecutor's Office Organization Act, which are designed to remedy shortcomings in the country's currently deficient system for the administration of justice;

(b) Efforts by the Ombudsman's Office, established by the Act of 22 December 1997, and its six offices currently in operation, and those of the Human Rights Commission established by the Chamber of Deputies, to improve the human rights situation in the country;

(c) The measures adopted by the State party to implement human rights training programmes not only for public officials, but also in universities and secondary schools, with the participation of the United Nations Development Programme and the Office of the High Commissioner for Human Rights.

C. Factors and difficulties impeding the application of the Convention

93. The Committee has taken note, during its consideration of the report, of the lack of training in human rights and, in particular, in the prohibition of torture given to law-enforcement officials and members of the armed forces, which has resulted in a situation in which serious ill-treatment and torture are inflicted.

94. Deficiencies in the legal aid system mean in practice that most detainees are deprived of their constitutional right to a defence lawyer.

D. Subjects of concern

95. The Committee expresses its concern with respect to the following:

(a) The unsatisfactory definition of the crime of torture in the Criminal Code, which does not cover some of the situations included in article 1 of the Convention, and the mild penalty prescribed, which is not consistent with the seriousness of the crime;

(b) The continuing complaints of torture and other cruel, inhuman or degrading treatment, resulting on many occasions in death, both in police stations and in prisons and military barracks;

(c) The impunity accorded to human rights violations and, in particular, the use of torture, which appears to be widespread, resulting from the lack of any investigation of complaints and the slow pace and inadequacy of such investigations, which demonstrates the lack of effective action by the authorities to eradicate these practices and, in particular, the dereliction of duty on the part of the Public Prosecutor's Office and the courts. The lack of investigations is compounded by the failure to remove the accused police officers from office, further reaffirming impunity and encouraging the continuation or repetition of these practices;

(d) Failure to respect the maximum period for holding persons incommunicado, set at 24 hours in the Constitution, which facilitates the practice of torture and cruel, inhuman and degrading treatment, and impunity therefor;

(e) Judicial delays which would appear to affect two thirds of the prison population, who are kept waiting for their cases to be heard, a situation which is largely responsible for the serious overcrowding of prisons;

(f) Overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, the inability of the authorities to guarantee the protection of detainees in situations involving violence within prisons. In addition to contravening the United Nations Standard Minimum Rules for the Treatment of Prisoners, these and other serious inadequacies aggravate the deprivation of liberty of prisoners serving sentences and those awaiting trial, making of such deprivation cruel, inhuman and degrading punishment and, in the case of the latter, punishment served in advance of sentence;

(g) Information it has received regarding the inhuman conditions under which prisoners are held in the facilities known as carceletas in the Chapare area, Santa Cruz, Cochabamba and other cities in which, in addition to the illegal nature of the so-called "legal deposit" imprisonment which does not exist in domestic law, detainees are held in subhuman conditions for indeterminate periods, sometimes lasting several months, and where juvenile and adult detainees are held together, as are prisoners awaiting trial and those already serving sentences. In addition, the disciplinary confinement in punishment cells of the kind known as el bote (the can) is, in the Committee's view, tantamount to torture;

(h) The numerous complaints submitted to the Ombudsman and the Human Rights Commission established by the Chamber of Deputies regarding treatment in breach of articles 1 and 16 of the Convention, which in some cases have caused serious injury and even loss of life, inflicted on soldiers in barracks during their compulsory military service under the pretext of disciplinary measures;

(i) The excessive and disproportionate use of force and firearms by the National Police and the armed forces in suppressing mass demonstrations resulting from social conflicts which, by remaining unpunished, encourage the repetition of such abuses and appear to indicate tacit approval on the part of the authorities. The torture, arbitrary detention and ill-treatment perpetrated by the police and military forces in their own facilities are particularly serious during periods when a state of siege has been declared;

(j) Frequent cases of harassment, threats and acts of aggression against human rights defenders;

(k) The return to their country of refugees from Peru without complying with procedural formalities that would have enabled them to present reasons why they were afraid of being returned to their country of origin.

96. The exceptional nature of those few cases in which the State has accepted its obligation to compensate for damage caused by exceptionally serious violations of the right to life would appear to demonstrate the absence of any State policy relating to redress for victims of human rights violations. The Committee is particularly concerned about the lack of government initiatives for the rehabilitation of torture victims.

E. Recommendations

97. The Committee recommends that the State party:

(a) Incorporate in its criminal legislation the definition of torture as set forth in the Convention, make torture a crime and stipulate penalties commensurate with its seriousness;

(b) Step up the activities to protect, defend and promote human rights which, according to its report, the State party has been developing, particularly those relating to vocational training for all law-enforcement officials;

(c) Adopt the necessary legal and administrative measures to set up a national public register of persons deprived of liberty, indicating the authority which ordered such deprivation, the grounds for the relevant decisions and the type of proceedings;

(d) Adopt the necessary measures to ensure effective compliance by government procurators with their duty to conduct criminal investigations into any complaint of torture and cruel, inhuman or degrading treatment in a prompt and impartial manner; during these investigations, the accused officials should be suspended from their duties;

(e) Set up a centralized public register of complaints of torture and ill-treatment and of the results of the investigations;

(f) Adopt all necessary measures to guarantee the free exercise by human rights defenders of their right to promote respect for such rights, to report violations of this right and to defend victims;

(g) Adopt all necessary measures to ensure that every person deprived of liberty exercises his/her right to a defence and receives the assistance of a lawyer, if necessary at the expense of the State;

(h) Review the disciplinary procedures and rules in prisons so as to ensure that violations are dealt with impartially and that any inhuman and cruel punishments are excluded;

(i) Adopt adequate measures to ensure that no person can be expelled, returned or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture; steps must be taken to ensure that these persons have the possibility of explaining these grounds in impartial and adversarial proceedings whose findings are subject to review by a higher authority;

(j) Make the declaration provided for in articles 21 and 22 of the Convention.

98. The Committee particularly urges the judiciary and the Public Prosecutor's Office to take the lead in action to redress serious omissions in the investigation and punishment of torture and cruel, inhuman and degrading treatment.

Slovakia

99. The Committee considered the initial report of Slovakia (CAT/C/24/Add.6) at its 464th, 467th and 475th meetings, held on 4, 7 and 11 May 2001 (CAT/C/SR.464, 467 and 475), and adopted the following conclusions and recommendations.

A. Introduction

100. The Committee welcomes the submission of the initial report of Slovakia although it notes that the report, due in May 1994, was submitted with six years' delay. The State party notes that the document includes both the initial and the second periodic reports. However, the Committee emphasizes that the consolidation of reports by States parties is contrary to their obligations under article 19 of the Convention.

101. The report does not fully conform with the Committee's guidelines for the preparation of initial State party reports, as it fails to include information on practical implementation of measures giving effect to the provisions of the Convention. The Committee further notes that the State party has yet to submit a core document. However, the Committee appreciates the

substantial efforts to engage in a constructive dialogue with the Committee and to supply some of the specific information and statistics in the oral presentations and replies to the Committee's questions.

B. Positive aspects

102. The Committee welcomes the following:

(a) The State party's adherence to the principal international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(b) The declarations made on 17 March 1995 recognizing the competence of the Committee under articles 21 and 22 and the withdrawal of the reservation on article 20 made on 7 July 1988 by the Czechoslovak Socialist Republic;

(c) The impressive efforts made by the State party aimed at major transformation in the political, economic, legislative and institutional spheres in Slovakia and the improved respect for human rights in that country;

(d) The inclusion of extensive human rights protections in the Constitution and the enactment, following Slovakia's independence, of a Charter of Fundamental Rights and Freedoms, and the amendment to the Constitution of 23 February 2001, establishing the supremacy of international treaties;

(e) The establishment of new institutions and of special units within the police to promote respect for human rights and, in particular, recent steps taken towards the establishment of the institution of Ombudsman.

C. Factors and difficulties impeding the application of the Convention

103. The Committee is aware of the difficulty of overcoming the inheritance of an authoritarian system in the transition to a democratic system and the challenges emanating from the rebuilding of State structures following the dissolution of the Czech and Slovak Federal Republic.

D. Subjects of concern

104. The Committee expresses concern about the following:

(a) The lack of specificity in the Criminal Code of the State party about the purposes of any act of torture, as defined in article 1 of the Convention;

(b) Exceptions to the guarantees of article 3 regarding the return of persons at risk of torture, in contradiction to the absolute prohibition of article 3;

(c) Allegations of instances of police participation in attacks on Roma and other members of the population, as well as allegations of inaction by police and law-enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened by "skinheads" or other extremist groups;

(d) Failure on the part of the authorities to carry out prompt, impartial and thorough investigations into allegations of such acts or to prosecute and punish those responsible;

(e) Allegations that law-enforcement officials have ill-treated detainees during detention and in police custody, particularly in lock-ups and police cells;

(f) Allegations of harassment of human rights defenders as well as threats, reportedly to deter submission of complaints, which are allegedly not adequately investigated;

(g) The lack of adequate guarantees of the rights of persons deprived of liberty to have access to counsel and a doctor of their choice, as well as prompt medical examinations.

E. Recommendations

105. The Committee recommends that the State party:

(a) Adopt a definition of torture which covers all elements of the definition contained in article 1 of the Convention and amend domestic penal law accordingly;

(b) Continue efforts towards structural reforms and the implementation of those contained in the 23 February 2001 amendments to the Constitution;

(c) Take measures to initiate an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill-treatment or torture by police and other public officials and, where the findings so warrant, to prosecute and punish perpetrators;

(d) Adopt measures to ensure that statements or information obtained through coercion is not admissible as evidence in courts and that legal provisions permitting the use of physical force by police officials are reviewed, revised as appropriate, and implemented in accordance with the requirements of the Convention;

(e) Protect human rights defenders from harassment and threats that undermine their capacity to monitor and provide assistance to those alleging human rights violations;

(f) Adopt measures to prevent inter-prisoner violence, including sexual violence, in places of detention and provide all relevant information on such practices in its next report;

(g) Provide the Committee in its next periodic report with statistical information on persons confined in State institutions, both civilian and military, for purposes of detention, correction, psychiatric health, specialized education, etc., with data disaggregated by, inter alia, by age, ethnicity, gender and geographical region;

(h) Take effective steps to guarantee the independence of the judiciary so as to strengthen the rule of law and democratic governance, essential for implementation of the Convention;

(i) Make adequate provisions for compensation and rehabilitation of victims of torture and ill-treatment;

(j) Continue to provide human rights training for law-enforcement, military and other officials, including those operating in local communities, as well as for those at border areas and those serving at officially administered institutions, and provide clear guidelines on the prohibition against torture and ill-treatment and the prohibition on returning persons facing a probable risk of torture;

(k) Disseminate the Committee's conclusions and recommendations, and the summary records of the review of the State party's initial report, widely in the country, and encourage non-governmental organizations to participate in this effort.

Czech Republic

106. The Committee considered the second periodic report of the Czech Republic (CAT/C/38/Add.1) at its 466th, 469th and 476th meetings, held on 7, 8 and 14 May 2001 (CAT/C/SR.466, 469 and 476), and adopted the following conclusions and recommendations.

A. Introduction

107. The Committee welcomes the excellent quality of the State party's second periodic report, which is in conformity with the guidelines, its frankness and its exhaustiveness, while observing that it was submitted more than two years late. It greatly appreciates the extensive additional update provided by the delegation of the Czech Republic both orally and in writing during consideration of the report and the clear, earnest and transparent answers to the questions raised by the Committee.

B. Positive Aspects

108. The Committee welcomes the ongoing efforts by the State party to reform its legal system and revise its legislation on the basis of universal human values in order to safeguard fundamental human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, including:

(a) The adoption of the new Aliens Law and the new Asylum Law, both effective from 1 January 2000;

(b) The amendment to the Citizenship Law adopted in September 1999, which resolved most problems of statelessness that had disproportionately affected the Roma population;

(c) The amendment to the legislation and the introduction of a special detention facility for foreigners, which resolved the problems arising from the detention of foreigners prior to expulsion.

109. The Committee welcomes the creation of the post of Government Commissioner for Human Rights and the Council of Human Rights, as well as the institution of Ombudsperson.

110. The Committee notes the efforts described by the representatives of the State party to comply with the recommendations of the Committee on the Elimination of Racial Discrimination (A/55/18, paras. 271-288).

111. The Committee welcomes the compensation provided to 208,000 former political prisoners.

112. The Committee welcomes the declarations made on 3 September 1996 recognizing the competence of the Committee under articles 21 and 22 and the withdrawal of the reservation on article 20.

C. Subjects of concern

113. The Committee expresses concern about the following:

(a) Instances of racism and xenophobia in society, including the increase in racially motivated violence against minority groups, as well as the increase in groups advocating such conduct;

(b) While welcoming the measures taken to address the problems faced by Roma, the Committee remains concerned about continuing incidents of discrimination against Roma, including by local officials, and particularly about reports of degrading treatment by the police of members of minority groups; and continuing reports of violent attacks against Roma and the alleged failure on the part of police and judicial authorities to provide adequate protection and to investigate and prosecute such crimes, as well as the lenient treatment of offenders;

(c) Allegations of the excessive use of force by law-enforcement officials during and after demonstrations, particularly alleged instances of cruel, inhuman and degrading treatment of persons arrested and detained as a result of the demonstrations during the International Monetary Fund (IMF)/World Bank meeting in Prague in September 2000;

(d) The lack of a mechanism of external control of the work of the police;

(e) The lack of adequate guarantees of the rights of persons deprived of liberty to notify a close relative or third party of their choice, to have access to doctors of their choice and to have access to counsel from the outset of their custody;

(f) The lack of legal regulation of external inspections of the prison system, in particular the rescinding of the legal provisions on civil inspection without replacement during the period under review, as well as the lack of an effective mechanism for processing prisoners' complaints;

(g) Inter-prisoner violence and bullying in various institutions, including prisons, the military and educational institutions, as well as the presence of male guards in prisons for women where that may lead to an abuse of their authority.

D. Recommendations

114. The Committee recommends that:

(a) The State party continue its efforts to counter all forms of discrimination against minorities and to implement its long-term policy aimed at the integration of the Roma population through legal as well as practical measures and, in particular, to increase efforts to combat and adequately sanction police ill-treatment of minorities and the failure to provide adequate protection;

(b) The State party ensure the independence and thoroughness of investigations of all allegations of ill-treatment in general and in connection with the IMF/World Bank meeting in September 2000 in particular, and to provide the Committee in its next periodic report with information on the findings and measures taken, including prosecutions and compensation to victims, as appropriate;

(c) The State party take appropriate measures to ensure the independence of investigations of offences committed by law-enforcement officials by introducing a mechanism of external control;

(d) All persons deprived of their liberty be guaranteed the right to notify a close relative or third party of their choice, the right to have access to a lawyer of their choice from the very outset of their custody, and the right to have access to a doctor of their choice in addition to any medical examination carried out by the police authorities;

(e) The State party set up an effective and independent system of control over prisoners' complaints and for the external and civic inspection of the prison system;

(f) Information be provided about the possibilities for redress and the rehabilitation services available for victims of torture and other forms of cruel, inhuman or degrading treatment or punishment;

(g) The State party accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;

(h) The Committee's conclusions and recommendations, and the summary records of the review of the State party's second periodic report, should be widely disseminated in the country.

Brazil

115. The Committee considered Brazil's initial report (CAT/C/9/Add.16) at its 468th, 471st and 481st meetings, held on 8, 9 and 16 May 2001 (CAT/C/SR.468, 471 and 481), and adopted the following conclusions and recommendations.

A. Introduction

116. The Committee welcomes the initial report of Brazil while noting that this report, which should have been submitted in October 1990, arrived after an excessive delay of 10 years. Brazil ratified the Convention on 28 September 1989 without making any reservation. The State party has not made the declarations provided for in articles 21 and 22.

117. The report was not prepared in complete conformity with the Committee's guidelines for the preparation of initial reports of State parties. However, the Committee expresses its appreciation for the remarkably frank and self-critical character of the report, which was, moreover, drafted in cooperation with a non-governmental academic institution. The Committee also welcomes the additional information provided by the State party delegation in its oral presentation and the constructive dialogue which took place.

B. Positive aspects

118. The Committee notes with satisfaction the following:

(a) The political will expressed by the State party to combat the practice of torture, and its eagerness to cooperate with United Nations bodies and regional organizations to this end;

(b) The frankness and transparency with which the Government recognizes the existence, seriousness and extent of the practice of torture in Brazil;

(c) The State party's efforts concerning the implementation of an education programme and the national human rights promotion campaign (scheduled for June 2001) aimed at sensitizing public opinion and the official actors concerned to action to combat torture. The Committee also welcomes the other measures taken by the State party to meet the concerns of the Special Rapporteur on torture following his visit to Brazil;

(d) The promulgation, in April 1997, of Law No. 9455/97 (Torture Act), which introduces into Brazilian criminal law the categorization of torture as an offence, with appropriate penalties;

(e) The establishment of various bodies intended to enhance respect for human rights, notably the Human Rights Commission of the Chamber of Deputies, the National Human Rights Secretariat under the Ministry of Justice, the Federal Procurator for Human Rights and the human rights commissions set up in some states;

(f) The legislation relating to refugees and the establishment of a procedure aimed at ensuring that an asylum-seeker is not returned to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture;

(g) The external monitoring of the police by the Public Prosecutor's Office and the State party's efforts to reinforce external and independent supervision through the appointment of police ombudsmen in several states;

(h) The contributions regularly paid by the State party to the United Nations Voluntary Fund for Victims of Torture.

C. Subjects of concern

119. The Committee expresses its concern about the following:

(a) The persistence of a culture that accepts abuses by public officials, the numerous allegations of acts of torture and cruel, inhuman or degrading treatment - in police stations, prisons and facilities belonging to the armed forces - and the de facto impunity enjoyed by the perpetrators of those acts;

(b) The overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, violence between prisoners and sexual abuse. The Committee is particularly concerned about allegations of ill-treatment and discriminatory treatment of certain groups with regard to access to the already limited essential services, notably on the basis of social origin or sexual orientation;

(c) The long periods of pre-trial detention and delays in judicial procedure which, together with the overcrowding in prisons, have resulted in convicted prisoners and prisoners awaiting trial being held in police stations and other places of detention not adequately equipped for long periods of detention, a fact which could in itself constitute a violation of the provisions of article 16 of the Convention;

(d) The lack of training of law-enforcement officials in general, at all levels, and of medical personnel, as provided by article 10 of the Convention;

(e) The competence of the police to conduct inquiries following reports of crimes of torture committed by members of police forces without effective control in practice by the Public Prosecutor's Office, with the result that immediate and impartial inquiries are prevented, which contributes to the impunity enjoyed by the perpetrators of these acts;

(f) The absence of an institutionalized and accessible procedure to guarantee victims of acts of torture the right to obtain redress and to be fairly and adequately compensated, as provided for in article 14 of the Convention;

(g) The absence in Brazilian legislation of an explicit prohibition on any statement obtained through torture being accepted as evidence in judicial proceedings.

D. Recommendations

120. The Committee makes the following recommendations:

(a) The State party should ensure that the law on the crime of torture is interpreted in conformity with article 1 of the Convention;

(b) The State party should take all necessary measures to ensure that immediate and impartial inquiries are carried out, under the effective control of the Public Prosecutor's Office, in all cases of complaints of torture or cruel, inhuman or degrading treatment, including acts committed by members of police forces. During such inquiries, the officers concerned should be suspended from their duties;

(c) All necessary measures should be adopted in order to guarantee to any person deprived of his or her liberty the right of defence and, consequently, the right to be assisted by a lawyer, if necessary at the State's expense;

(d) Urgent measures should be taken to improve conditions of detention in police stations and prisons, and the State party should, moreover, redouble its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned;

(e) The State party should reinforce human rights education and promotion activities in general and regarding the prohibition of torture in particular, for law-enforcement officials and medical personnel, and introduce training in these subjects in official education programmes for the benefit of the younger generations;

(f) Measures should be taken to regulate and institutionalize the right of victims of torture to fair and adequate compensation payable by the State, and to establish programmes for their fullest possible physical and mental rehabilitation;

(g) The State should explicitly prohibit the use as evidence in judicial proceedings of any statement obtained through torture;

(h) The State should make the declarations provided for in articles 21 and 22 of the Convention;

(i) The second periodic report of the State party should be submitted as soon as possible in order to conform to the schedule provided for in article 19 of the Convention, and should include in particular: (i) relevant judicial decisions relating to the interpretation of the definition of torture; (ii) detailed information on allegations, inquiries and convictions relating to acts of torture committed by public officials; and (iii) information concerning measures taken by the public authorities to implement, throughout the country, the recommendations of the Committee, and those of the Special Rapporteur on torture to which the State party delegation referred during the dialogue with the Committee.

Kazakhstan

121. The Committee considered the initial report of Kazakhstan (CAT/C/47/Add.1) at its 470th, 473rd and 482nd meetings (CAT/C/SR.470, 473 and 482), held on 9, 10 and 17 May 2001, and adopted the following conclusions and recommendations.

A. Introduction

122. The Committee welcomes the initial report of Kazakhstan and notes that the report mainly addresses legal provisions and lacks detailed information on the implementation of the Convention in practice. However, the Committee wishes to express its appreciation for the extensive and informative oral update given by the high-level delegation of the State party during the consideration of the report.

B. Positive aspects

123. The Committee notes the statement by the representatives of the State party that the Government of Kazakhstan will shortly adopt a specific crime of torture, defined in conformity with article 1 of the Convention, and that the crime of "torture" will be added to article 116 of the Code of Criminal Procedure.

124. The Committee appreciates the assurances that the Government of Kazakhstan will create an independent ombudsman, with a team of qualified lawyers, jurists and human rights advocates available free of charge to citizens needing its assistance.

125. The Committee welcomes the progress made in conjunction with the World Health Organization in lowering the incidence of tuberculosis in places of detention and the development of a long-term plan of cooperation with international organizations to continue such efforts.

126. The Committee welcomes the fact that the Government, recognizing the binding effect of the Convention on the Elimination of All Forms of Discrimination against Women, has reported to the treaty-monitoring body regarding its implementation of that Convention. The Committee against Torture, appreciating the Government's assurances that it will take appropriate action to give continuing effect to the International Covenant on Economic, Social and Cultural Rights and to the International Covenant on Civil and Political Rights, notes that the Human Rights Committee has requested the submission of a report by Kazakhstan on its implementation of the latter Covenant by July 2001.

C. Factors and difficulties impeding the application of the provisions of the Convention

127. The Committee is aware of the difficulty of overcoming the inheritance of an authoritarian system in the transition to a democratic form of governance and the challenges emanating from the rebuilding of State structures.

D. Subjects of concern

128. The Committee expresses its concern about the human rights situation in general, and in particular about the following:

(a) The absence of a definition of torture, as provided in article 1 of the Convention, in the Criminal Code of the State party and the lack of a specific offence of torture, with the result that torture is not punishable by appropriate penalties, as required in article 4, paragraph 2, of the Convention;

(b) The allegations of acts of torture and other cruel, inhuman and degrading treatment or punishment committed by law-enforcement officials of the State party or with their acquiescence, including beatings and other actions in breach of the Convention against political opponents of the Government;

(c) The insufficient level of independence and effectiveness of the procuracy, in particular as the Procurator has the competence to exercise oversight on the appropriateness of the duration of pre-trial detention;

(d) The pattern of failure of officials, including the procuracy, to provide in every instance prompt, impartial and full investigations into allegations of torture reported to the authorities, as well as a failure to prosecute alleged perpetrators, as required by articles 12 and 13 of the Convention. The Committee appreciates, but expresses concern, over the Government's acknowledgement of superficial investigations, destruction of evidence, intimidation of victims, and forced repudiation of testimony by investigators and personnel of the Ministry of Internal Affairs;

(e) Allegations that judges refuse to take into account evidence of torture and ill-treatment provided by the accused with regard to his/her treatment by law enforcement officials;

(f) The insufficient level of independence of the judiciary, with judges whose tenure lacks certain necessary safeguards;

(g) The insufficient level of guarantees for the independence of defence counsel;

(h) The overcrowding and lack of access to adequate medical care in prisons and pre-trial detention centres, and particularly in juvenile detention centres, where there are reports of incidents of self-mutilation by detainees; and concern that alternatives to imprisonment are not available to detainees and that the failure to provide adequate corrective programmes, education and training create situations leading to heightened recidivist levels;

(i) The criterion for success by investigators is the number of solved crimes, which can lead to pressure upon detainees to "confess" as a result of actions in breach of the Convention.

(j) The absence of information in the report regarding torture and ill-treatment affecting women and girls, particularly in view of the rise in imprisonment rates of females and allegations of abusive treatment of women in police custody.

E. Recommendations

129. The Committee recommends that the State party:

(a) Proceed promptly with its stated plans to amend its domestic penal law to include the crime of torture, fully consistent with the definition contained in article 1 of the Convention and supported by an adequate penalty;

(b) Take urgent and effective steps to establish a fully independent complaints mechanism and to ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities, and the prosecution and punishment, as appropriate, of perpetrators;

(c) Expand the powers of the Presidential Human Rights Commission so that it may become an independent and impartial governmental and non-governmental national human rights commission in conformity with the Paris Principles, with effective power, inter alia, to investigate all complaints of human rights violations, in particular those pertaining to the implementation of the Convention;

(d) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture;

(e) Take measures, including a review of the Constitution, laws and decrees, to establish and ensure the independence of the judiciary and defence counsel in the performance of their duties in conformity with international standards;

(f) Proceed with the adoption of measures to permit defence counsel to gather evidence and to be involved in cases from the very start of the detention period, and to ensure that doctors will be provided at the request of detained persons, rather than the orders of prison officials;

(g) Improve conditions in prisons and pre-trial detention centres and establish a system allowing for inspections of prisons and detention centres by credible impartial monitors, whose findings should be made public. The State party should also take steps to shorten the current 72-hour pre-trial detention period and avoid prolonged arrest and detention prior to trial;

(h) Complete the transfer of responsibilities for prisons from the Ministry of Internal Affairs to the Ministry of Justice, thereby permitting the demilitarization of the penitentiary system;

(i) Provide independent judicial oversight of the period and conditions of pre-trial detention;

(j) Review cases of convictions based on confessions that may have been obtained through torture or ill-treatment, and ensure adequate compensation to victims;

(k) Make the declarations under articles 21 and 22 of the Convention;

(l) Ensure that specialized personnel are trained to identify signs of physical and psychological torture and that their examinations for requalification include awareness of the Convention's requirements;

(m) Provide data in the next periodic report, disaggregated, inter alia, by age, gender, ethnicity and geography, on civil and military places of detention as well as on juvenile detention centres and other institutions where individuals may be vulnerable to torture or ill-treatment under the Convention; provide information in the next periodic report regarding the number, types and results of cases of punishment of police and other law enforcement personnel for torture and related offences, including those rejected by the court; provide full information on the results of criminal cases described in the State party's initial report and on the compensation provided, if any;

(n) Widely disseminate the Committee's conclusions and recommendations, the summary records of the review of the State party's initial report and the State party's report in the country, including to law-enforcement officials and by means of publication in the media and through distribution and popularization efforts by non-governmental organizations;

(o) Consider consulting with non-governmental and civil society organizations when preparing all parts of the next periodic report.

Costa Rica

130. The Committee considered the initial report of Costa Rica (CAT/C/24/Add.7) at its 472nd, 475th and 482nd meetings, held on 10, 11 and 17 May 2001 (CAT/C/SR.472, 475 and 482), and adopted the following conclusions and recommendations.

A. Introduction

131. Costa Rica deposited its instrument of ratification of the Convention on 11 November 1993 without making any reservation. The State party has not made the declarations provided for in articles 21 and 22 of the Convention.

132. The report was submitted after a delay of more than five years. In both form and content it complies with the Committee's general guidelines for the preparation of initial reports of States parties. The core document (HRI/CORE/1/Add.104) also conforms to the established guidelines.

133. The Committee welcomes and expresses its appreciation for the frank and constructive dialogue with the representatives of the State party that took place during consideration of the report.

B. Positive aspects

134. The Committee notes with satisfaction the following:

(a) The supremacy of international human rights instruments in general and the Convention in particular over domestic law, including the Constitution, to the extent that they contain broader rights and guarantees than those recognized in the latter;

(b) The State party's accession to and ratification of most of the international human rights instruments, in both the global and inter-American systems, and its recognition of the self-executing effect of their provisions;

(c) The Committee has not received any information from non-governmental organizations about acts or situations that might constitute non-compliance by the State party with its obligations under the Convention;

(d) The inclusion in domestic law of provisions that permit the extraterritorial enforcement of criminal law in order to prosecute and punish persons responsible for torture;

(e) The adequate legal and institutional regime for the protection and promotion of human rights, in particular:

(i) The adequate constitutional and legal regulation of the remedies of habeas corpus and amparo, and the broad interpretation of those provisions by the national courts;

(ii) The autonomy and powers of the ombudsman's office;

(iii) The existence of numerous bodies and institutions available to the persons concerned for lodging complaints of torture or cruel, inhuman or degrading treatment;

(iv) The system of monitoring of police activities;

(f) The explicit inclusion in the Constitution and laws of the rights and guarantees of every person deprived of liberty, in particular:

(i) The requirement of a written arrest warrant issued by a competent authority, except in cases of flagrante delicto;

(ii) The obligation of the person making an arrest to inform the arrested person of the reason for his arrest and his rights to remain silent, to inform anyone he wishes of the arrest and to have the services of a defence counsel of his choice;

(iii) The time limit of six hours set for the police to bring the detainee before a member of the Public Prosecutor's Office and 24 hours to place him at the disposal of a judge, and the exclusion of arrest on suspicion;

(g) The planned construction and renovation of prisons.

C. Subjects of concern

135. The Committee expresses its concern about the following:

(a) The fact that torture is not characterized as a specific offence, despite the express prohibition of torture in the Constitution;

(b) The inadequacy of training concerning the prohibition of torture for police officers and prison personnel, which is frankly admitted in the report;

(c) The cases of abuse of authority by police officers and prison personnel, as described in the State party's report;

(d) The overpopulation of prisons, which has led to overcrowding, caused by inadequate investment in prison infrastructure and the use of deprivation of liberty and longer prison sentences as virtually the sole response to an increase in crime;

(e) The absence of State programmes for the rehabilitation of torture victims;

(f) The maximum-security detention regime, comprising 23 hours of confinement and just one hour outside the cell, appears excessive;

(g) The absence of statistical data in the report on cases of abuse of authority, the results of the investigations conducted in such cases and the consequences for the victims in terms of redress and compensations.

D. Recommendations

136. The Committee recommends that the State party:

(a) Include the crime of torture in the Criminal Code in terms consistent with article 1 of the Convention and with a penalty commensurate with its seriousness, as prescribed in article 4, paragraph 2, of the Convention;

(b) Step up training activities, with the specific inclusion of full information the prohibition of torture in the training of police officers and prison personnel;

(c) Ensure that its next two periodic reports are submitted in accordance with article 19 of the Convention;

(d) Make the declarations provided for in articles 21 and 22 of the Convention;

(e) Make the process for granting refugee status more efficient in order to reduce the long period of uncertainty for asylum-seekers and refugees;

(f) Include in its next report statistical data, disaggregated by, inter alia, the age and gender of victims and the services to which the perpetrators belong, on cases relevant to the Convention that are heard by domestic bodies, including the results of investigations made and the consequences for the victims in terms of redress and compensation.

(g) Widely disseminate the Committee's conclusions and recommendations in the State party.

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

A. General information

137. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

138. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

139. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

140. The Committee's work under article 20 of the Convention thus commenced at its fourth session and continued at its fifth to twenty-sixth sessions. During those sessions the Committee devoted the following number of closed meetings to its activities under that article:

Sessions	Number of closed meetings
Fourth	4
Fifth	4
Sixth	3
Seventh	2
Eighth	3

Ninth	3
Tenth	8
Eleventh	4
Twelfth	4
Thirteenth	3
Fourteenth	6
Fifteenth	4
Sixteenth	4
Seventeenth	4
Eighteenth	4
Nineteenth	4
Twentieth	5
Twenty-first	3
Twenty-second	8
Twenty-third	4
Twenty-fourth	4
Twenty-fifth	3
Twenty-sixth	2

141. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed.

142. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may after consultations with the State party concerned decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

143. Such a summary account is hereby provided.

B. Summary account of the results of the proceedings concerning the inquiry on Peru

Introduction

144. Peru ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 July 1988. At the time of ratification it did not declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention. The possibility of making such a reservation is provided for by article 28, paragraph 1, of the Convention. The procedure under article 20 is therefore applicable to Peru.

145. The application to Peru of the confidential procedure provided for in article 20, paragraphs 1-4, of the Convention began in April 1995 and ended in May 1999. In accordance with article 20, paragraph 5, of the Convention, the Committee, after holding consultations with the State party concerned on 15 November 1999, decided, on 16 May 2001, during its twenty-sixth session, to include in the annual report it is to submit to the General Assembly in 2001 the following summary of the results of the inquiry on Peru. The decision was taken unanimously.

Development of the procedure

146. In April 1995, the Committee considered in closed session information on complaints of the systematic practice of torture in Peru which had been communicated to it, pursuant to article 20 of the Convention, by Human Rights Watch, a non-governmental organization. It recalled that, in the conclusions and recommendations it had adopted on 9 November 1994 at the end of its consideration of the initial report of Peru, it had stated: "One cause for serious concern is the large number of complaints from both non-governmental organizations and international agencies or commissions indicating that torture is being used extensively in connection with the investigation of acts of terrorism and that those responsible are going unpunished." The Committee instructed one of its members, Mr. Ricardo Gil Lavedra, to analyse the information and to propose further action.

147. In August 1995, the Coordinadora Nacional de Derechos Humanos, a Peruvian non-governmental body comprising some 60 non-governmental organizations, also sent the Committee complaints about systematic torture in that State party.

148. In November 1995, the Committee decided to request the Government of Peru to give its own view on the reliability of the information received.

149. In May 1996, the Committee instructed another of its members, Mr. Alejandro González Poblete (Mr. Gil Lavedra had not been re-elected as a Committee member), to determine, on the basis of the information received from the above-mentioned non-governmental sources and the Government's observations, whether it should continue to apply the procedure provided for under article 20 of the Convention.

150. In November 1996, the Committee concluded that the information received was reliable and contained well-founded indications that torture, as defined in article 1 of the Convention, was being systematically practised in Peru. It therefore invited the State party to submit its observations on the substance of the information received.

151. In May 1997, the Committee requested the Government also to submit its observations on new complaints of torture which had been brought to its attention by Human Rights Watch and the Coordinadora Nacional de Derechos Humanos in recent months. Two Committee members, Mr. González Poblete and Mr. Bent Sørensen, agreed to follow the development of the procedure.

152. The Government of Peru subsequently submitted its observations and requested a private meeting between its representatives and Mr. González Poblete and Mr. Sørensen. The meeting was held in the United Nations Office at Geneva on 6 November 1997.

153. On 20 November 1997, during its nineteenth session, the Committee decided to conduct a confidential inquiry, designated Mr. González Poblete and Mr. Sørensen for that purpose, invited the Peruvian Government to cooperate in the inquiry and requested it to agree to a visit to Peru by the designated Committee members. The visit was agreed to and took place from 31 August to 13 September 1998. In the meantime, the Committee continued to transmit to the Government summaries of complaints received, including individual cases, and to request information on them. Between 1996 and 1998, the Committee transmitted a total of 517 cases alleged to have occurred in the period between August 1988 and December 1997.

154. The Committee members making the inquiry submitted an oral report to the Committee in November 1998 and a written report in May 1999. Also in May 1999, the Committee decided to endorse the report and transmit it to the State party. This was done on 26 May 1999.

155. In November 1999, the Committee considered the Government's response to the conclusions and recommendations contained in the report and, on 15 November 1999, it consulted representatives of the Government concerning the possibility of including a summary account of the results of the inquiry in the Committee's annual report, as required by article 20, paragraph 5, of the Convention. The Committee nevertheless decided to postpone the adoption of a decision on this matter and to request the State party to provide additional information on the implementation of the Committee's recommendations before 1 September 2000. Lastly, the Committee decided to mention in the annual report it was to submit to the General Assembly in 2000 that it had conducted an inquiry under article 20 of the Convention in connection with Peru.

156. The State party sent the Committee the information requested on 1 September and 16 October 2000, and sent additional information on 21 December 2000 and 7 February 2001.

Conclusions contained in the report of the Committee members who made the inquiry

157. As indicated above, the Committee members who made the inquiry submitted their written report in May 1999. The report contains the conclusions set out in detail below.

Complaints received during the inquiry

Observations

158. The Committee received extensive information from non-governmental organizations during the inquiry, basically concerning cases of persons with whom it had had some form of contact and who claimed to have been victims of torture. A large number of such cases involved persons who had been arrested in the context of activities by the security forces against armed insurgent groups, and a number of others concerned persons arrested in the course of investigations of ordinary offences. People in the former group claimed that they had been tortured by members of the anti-terrorist branch of the National Police or by the army, while those in the latter group blamed police officers. In both cases the goal was basically to obtain information that might be of use in the police investigation.

159. Their visit to the country enabled the Committee members to delve further into the subject of their inquiry. They talked with representatives of non-governmental organizations, lawyers, judges and prosecutors, who agreed that torture was widespread and referred to new cases or elaborated on cases with which the Committee was already familiar but which stood out because of their impact on public opinion or their value as indicators of the extent and characteristics of torture. The Committee members were also able to compare that information with oral testimony received from people who were in detention at the time or had been detained in the past. Some of the people with whom the Committee members spoke were contacted through non-governmental organizations, while some of those in detention were selected at random. Many of the persons interviewed who claimed to have been tortured were examined by the doctors taking part in the mission, who concluded, in the great majority of cases, that the allegations were consistent with the presence or absence of physical signs of torture. The Ombudsman and his staff expressed their concern at the practice of torture in Peru to the Committee members.

160. On the basis of the information thus obtained, the Committee members noted that the number of cases had decreased in 1997-1998. The above-mentioned sources confirmed that decrease, which was linked to the decrease in the number of persons detained in the context of activities against subversive groups, due in turn to the significant decrease in the activities of such groups. Decrease does not mean disappearance, however, since the Committee has continued to receive information about cases allegedly occurring in 1997-1998. The Committee members also noted, on the basis of the information received, that torture of persons detained in the course of investigations of ordinary offences was a problem that some sources described as endemic, although its particular features had not earned it the same attention as the torture of persons accused of terrorism.

161. The Committee members were able to compare the information thus received with information provided by the Government. The latter information was provided in both written and oral form. The written information consisted basically of replies concerning individual cases communicated by the Committee. The Committee members noted that, according to those replies, those responsible had been punished in some cases, but virtually only when the victim had died. Punishment, moreover, was too mild in comparison with the offence. The Committee members noted that in a large number of cases the Government provided no information or stated that there was no information on file with the competent authorities. Also in a large number of cases, the Government provided background information on the detention and trial of the alleged victim but made no reference to the allegations of torture.

162. The Committee members were able to talk with government officials before and during their visit to the country. Those officials stated that when anti-insurgent activities had been at their height some abuses had been committed, but such abuses had been the exception, punishment had been imposed and measures had been taken to ensure that they did not recur.

Conclusions

163. In the opinion of the Committee members, the large number of complaints of torture, which have not been refuted by the information provided by the authorities, and the similarity of the cases, in particular the circumstances under which persons are subjected to torture and its objectives and methods, indicate that torture is not an occasional occurrence but has been systematically used as a method of investigation. In this regard, the members of the Committee recall the views expressed by the Committee in November 1993 on the main factors that indicate that torture is systematically practised in a State party. These views are as follows:

> "The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice."

Legal issues

Observations

164. The Committee members noted that, despite the existence of constitutional provisions protecting them, the rights of detained persons have been undermined by the anti-terrorist legislation, most of which was adopted in 1992 and is still in force, and which makes detainees particularly vulnerable to torture. At the same time, the rights of persons detained for ordinary crimes have also been undermined under the legislation adopted in 1998 on a series of particularly serious offences. Aspects such as the extension of the armed forces' powers of

detention, the length of pre-trial detention, incommunicado detention in police custody, the weakening of the role of the Public Prosecutor's Office in conducting police investigations and ensuring respect for the rights of detainees, the probative value given to police reports, the limitations on the habeas corpus procedure and on legal assistance to detainees, and the poor medical follow-up of persons detained are matters of particular concern to the Committee members and should be the subject of corrective legislation. The existence of the 1998 legislation leads the Committee members to conclude that torture has been occurring with the authorities' acquiescence. The Committee members also noted the high degree of impunity enjoyed by those responsible for acts of torture, impunity which was significantly incorporated into the 1995 amnesty legislation.

Conclusions

165. In the Committee members' opinion, it will not be possible to eradicate torture in Peru without radical changes in this area. Although the adoption in 1998 of legislation defining the offence of torture and clearly establishing jurisdictional rules is a positive step, past cases must not go unpunished. Furthermore, criminal aspects are not the only ones that must be given attention. It is also imperative to take legislative measures for reparation and compensation of the victims.

166. In the Committee members' opinion, the legislation in force contains a series of weaknesses which hinder the practical implementation of the obligations established by the Convention, as it provides little protection against torture under criminal law, impedes the investigation of complaints and fosters impunity for the guilty, all of which is attested by the small number of judicial investigations of cases of torture and the even smaller number of government employees who have been punished.

167. With regard to the time limits for pre-trial detention, although the Constitution authorizes the extension of the time limit by decision of the police authorities in cases of terrorism, espionage and illicit drug trafficking, there should be a government decision limiting that authority to the point where the time limit provided for in article 2, paragraph 24 (j), of the Constitution is re-established for all offences. The limitation of the duration of incommunicado detention provided for in article 133 of the Code of Penal Procedure should also be fully enforced for all types of offences.

168. Medical examinations of all detainees, whichever authority has effected the detention, should be made mandatory. The Government should provide the human and material resources to ensure that this is done. The initial examination should take place within 24 hours of the time of detention and further examinations should be performed whenever the prisoner is transferred and on release.

169. Similarly, judges should order an immediate prior examination of detainees as soon as the latter are brought before them. When making their first statement, detainees should be explicitly asked whether they have been subjected to torture or other cruel, inhuman or degrading

treatment. Failure to ask should invalidate the accused's statement. Similarly, any physician examining a person detained or being released should question him or her specifically about torture, take the answer into account in conducting the medical examination, and include both the question and answer in the medical report.

170. Any provision that is in contradiction with the constitutionally-vested power of the Public Prosecutor's Office to investigate any offence from the outset should be repealed and substantial penalties should be established for any interference with the exercise of this power. To that end, the Government should grant the Public Prosecutor's Office the human and material resources needed to exercise this power effectively throughout the country.

171. The public defender service should be given the legal powers and human and material resources necessary for ensuring that every detainee is able to avail himself of it from the time pre-trial detention is ordered.

172. Every judge, on learning from the accused's statement that the accused has been subjected to torture in an effort to force him or her to corroborate the police report, without prejudice to the ordering of a medical examination, should immediately order the statement referred to the Public Prosecutor's Office for investigation of the complaint. If the grounds for the complaint are substantiated, criminal proceedings against those responsible should be conducted as part of the same proceedings, and the judgement must take into account the complaint based on the allegation of torture as well as the complaint against the accused. To that end, the provisions prohibiting police officers who have helped in the preparation of self-incriminating statements from being called on to testify should be repealed.

173. All legal provisions or rules of inferior rank which limit the competence of criminal court judges to hear applications for habeas corpus should be repealed. In particular, any provision which vests judges outside the ordinary justice system with competence to hear applications for habeas corpus should be repealed.

174. Legislation should be enacted to the effect that, in cases which might involve any of the offences against humanity referred to in Title XIV-A of the Penal Code, an inquiry shall be opened even when the alleged perpetrator(s) have not been individually identified. Legislation should also be enacted stipulating that, where such offences are concerned, criminal proceedings and sentencing shall not be time-barred and the granting of amnesty or pardon shall be inadmissible.

175. Lastly, the trend towards the expansion of the jurisdiction of military courts, intensified with the promulgation of Legislative Decree No. 895 of 24 May 1998, should be reversed; the jurisdiction of such courts should be strictly limited to offences of official misconduct.

Places of detention visited

Ministry of the Interior facilities

Observations

176. The Committee members making the inquiry found unsatisfactory conditions of detention, particularly in the cells of the following places of detention:

(a) National Anti-Terrorism Department (DINCOTE), Lima;

(b) Criminal Investigation Division (DIVINCRI), Lima;

(c) Criminal Investigation Division, Chiclayo;

(d) Cells adjacent to the Courthouse, Chiclayo.

177. They noted from the registers of those facilities and during interviews with inmates that arrested persons may be detained there for periods of up to 35 days. They also noted that, in certain cases, persons under interrogation by DINCOTE were forced to spend the night in the interrogation rooms lying on the floor and handcuffed.

Conclusions

178. The Committee members are of the view that a long period of detention in the cells of the detention places referred to above, i.e. two weeks, amounts to inhuman and degrading treatment. Longer periods of detention in those cells amount to torture. Moreover, the practice of forcing persons under interrogation to spend the night in the interrogation rooms lying handcuffed on the floor also amounts to torture.

179. The Peruvian authorities should take measures to:

(a) Improve in particular the hygienic conditions of detention;

(b) Ensure that periods of detention are in strict conformity with the limits established by law; and

(c) Prohibit the practice of forcing detainees under interrogation to spend the night in the interrogation rooms lying handcuffed on the floor.

Ministry of Justice facilities

180. The members of the Committee conducting the investigation visited the Castro Castro, Lurigancho and Santa Monica prisons in Lima. In Chiclayo they visited the Pisci prison, including sections for women and for persons convicted of terrorism .

Observations

181. The Committee members conducting the investigation noted great overcrowding in almost all prisons, which inevitably leads to hygiene problems. In certain cases, the problems are aggravated by the lack of running water. The Committee members did not receive any complaint of torture in the prisons. Although certain punishments amounting to torture at the instigation of the former governor of Lurigancho prison were reported to them, they noted that the new governor was energetically pursuing a new policy of eradicating brutal practices by the prison guards. Furthermore, none of the many cases of torture submitted by non-governmental organizations or reported during interviews related to premises under the jurisdiction of the Ministry of Justice.

182. The Committee members noted the excessive rigour of the maximum-security regimes, one feature of which is that they are applied as soon as a person enters prison; in other words, they are applied to both tried and untried prisoners. At their most stringent, these regimes involve constant confinement in the cell with only one hour in the yard a day for an initial period of one year, renewable every six months.*

Conclusions

183. The Committee members are of the view that, generally speaking, although Ministry of Justice detention facilities raise problems in relation to other international human rights instruments (overcrowding, hygiene, etc.), they seem to pose no problems in connection with the implementation of article 20 of the Convention. However, the Committee members are deeply concerned about the deplorable detention conditions (no electricity, no drinking water, temperatures of minus 10° or 15° C without heating, etc.) of the maximum security prisons at Challapalca and Yanamayo, in the south of Peru, which were reported to them by non-governmental organizations and, in particular, by detainees who had been transferred to those prisons for a month or more as a form of disciplinary sanction. It appears that the deplorable conditions of detention are further aggravated by health problems caused by the fact that Challapalca and Yanamayo prisons are situated in the Andes at a height of more than 4,500 metres above sea level. The Committee members are of the view that detention conditions in Challapalca and Yanamayo, as reported to them, amount to cruel and inhuman treatment and punishment. In this connection, they fully support the initiative taken by the Ombudsman's Office in June 1997 to recommend to the Directorate of the National Penitentiary Institute not to transfer prisoners or prison personnel to Challapalca.

184. The Committee members are of the view that, generally speaking, the Peruvian authorities should redouble their efforts to solve the problem of prison overcrowding and improve conditions of hygiene. Specifically, the Peruvian authorities should close Challapalca and Yanamayo prisons.

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* In this connection, the Committee takes note of the information provided by the Government on 22 September 1999 relating to the doubling (to two hours) of the time during which prisoners subject to the special maximum-security and special medium-security regimes are allowed out into the yard.

Ministry of Defence facilities

Observations

185. The Committee members making the inquiry visited the maximum security detention centre at the El Callao naval base, where there were seven prisoners, six of whom were prominent leaders of the subversive movements Sendero Luminoso and Movimiento Revolucionario Túpac Amaru. They were serving sentences of between 30 years and life imprisonment in complete solitary confinement. The regime to which they are subjected is very strict but respects their basic needs, except for deprivation of sound and communication. They are not allowed to talk among themselves or with the prison guards, and the cells are totally soundproofed against outside noise. They have the right to go outside, albeit alone, to a small yard surrounded by high walls for a maximum of one hour a day. They are allowed visits by close family members for half an hour once a month, but there is no physical contact.

Conclusions

186. The Committee members are of the view that sensorial deprivation and the almost total prohibition of communication cause persistent and unjustified suffering which amounts to torture. The Peruvian authorities should put an end to this situation.

Cooperation by the Peruvian authorities in the inquiry

Observations

187. The Committee members making the inquiry wish to recall that the Committee began its consideration of the reports of complaints about the systematic use of torture in Peru in April 1995 and completed consideration in May 1999. During this period, the Peruvian authorities always responded positively to the Committee's invitations to cooperate in the inquiry that was decided on 22 November 1996 and acceded to its request to allow a visit to Peru.

Conclusions

188. The Committee members making the inquiry take note with satisfaction of the excellent cooperation extended by the Peruvian authorities during the inquiry, in conformity with the provisions of article 20, paragraph 3, of the Convention, and wish to thank them.

CONCLUDING OBSERVATIONS

189. The Committee notes that, in the observations sent to it on 22 September 1999 concerning the inquiry report, the State party expressed its disagreement with the Committee's conclusion concerning the existence of systematic torture in Peru and repeated that torture was not a tolerated practice there. The State party rejected the suggestion that the anti-terrorist legislation constituted per se a valid ground for the Committee's conclusion that torture had occurred with the acquiescence of the authorities. It stated that, prior to the entry into force of the law characterizing the offence of torture, the existing legislation had in fact permitted the

punishment of acts of torture; that it was not necessary to adopt legislative measures that would permit redress and compensation for torture victims since such legislation already existed; that both the Constitution and the Supreme Court's case law established the obligatory nature of the medical examination of detainees before they went before the courts; that the constitutional powers of the Public Prosecutor's Office with regard to the investigation of offences had not been curtailed; that by the Act of 23 December 1998 the public defender system had been restructured; that the investigation and punishment of torture cases as part of the same proceedings as those in which the cases were detected would not be practicable; that there were no constitutional provisions banning testimony by police officers who had contributed to the preparation of self-incriminating statements; that it was not practicable to legislate for a judicial examination when the perpetrator of the acts of torture had not been individually identified; and that, by a decree of 18 February 1999, the Regulations relating to the Regime and Progressive Treatment for Prisoners Accused and Convicted of Terrorism or Treason had been amended, adding one hour to the yard time allowed prisoners subject to the special maximum-security or special medium-security regimes.

190. In subsequent communications, the State party reported that various types of political, administrative and legislative action which, in general, conformed to the Committee's recommendations were being undertaken. He mentioned the following in particular:

(a) Establishment of a Presidential Commission for the Strengthening of the Democratic Institutions;

(b) Modification of Legislative Decree No. 895: the investigation and trial of the offence of special terrorism were now within the competence of the ordinary courts, and habeas corpus proceedings relating to such offences would be brought in accordance with the general legislation on the subject;

(c) Adoption of two decisions by the Supreme Court of Justice to the effect that crimes against humanity, including torture, were within the competence of the ordinary courts and must be dealt with in accordance with the ordinary procedure;

(d) Formulation of a plan to terminate, within a period of two years, the practice of appointing provisional judges and prosecutors;

(e) Termination of the state of emergency in practically all areas of the country;

(f) Opening of two new prison facilities and the granting of over 1,500 pardons and reprieves, which had helped to reduce the prison population and improve conditions for prisoners;

(g) Establishment, within the Ombudsman's Office, of a Team for the Protection of Human Rights in Police Stations, with responsibility for verifying the situation of detainees;

(h) Establishment of a Single Register of Complaints for crimes against humanity, to be compiled by the Public Prosecutor's Office;

(i) Inclusion in the "Forensic Procedures" of the "Forensic examination procedures for the detection of injuries or death resulting from torture";

(j) Intensification of training activities on subjects relating to human rights within the National Police.

191. The Committee has continued to receive disturbing information from non-governmental organizations about cases of torture which occurred after the visit to Peru by two of its members.

192. The Committee takes note with particular interest of the statement made by Mr. Diego García Sayán, Minister of Justice of Peru, on 27 March 2001 at the fifty-seventh session of the United Nations Commission on Human Rights. He stated that, in the four months during which the transitional Government of Mr. Valentín Paniagua had held office following the resignation of President Alberto Fujimori, intensive efforts had been made to provide effective tools for the protection of human rights. In particular, the Government was taking the necessary steps to establish a truth commission which would clarify the violations of human rights, including torture, that had occurred in Peru between 1980 and 2000, and to formulate a policy of redress for the victims.

193. The Committee expresses the hope that the Government of Peru which is to take office in July 2001 will take energetic and effective steps to rapidly end the practice of torture, in accordance with the provisions of the Convention.

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION

194. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit communications to the Committee against Torture for consideration subject to the conditions laid down in that article. Forty-three out of 124 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are: Algeria, Argentina, Australia, Austria, Belgium, Bulgaria, Cameroon, Canada, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Ghana, Greece, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Yugoslavia. The new States parties that have made the declaration under article 22 of the Convention since the last report are Ghana and Cameroon. No communication may be considered by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to consider individual communications.

195. Consideration of communications under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential.

196. In carrying out its work under article 22, the Committee may be assisted by a working group of not more than five of its members or by a special rapporteur designated from among its members. The working group or the special rapporteur submits recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications or assists it in any manner which the Committee may decide (rule 106 of the rules of procedure of the Committee). Special rapporteurs may take procedural decisions (under rule 108) during inter-sessional periods, thereby expediting the processing of communications by the Committee.

197. A communication may not be declared admissible unless the State party has received the text of the communication and has been given an opportunity to furnish information or observations concerning the question of admissibility, including information relating to the exhaustion of domestic remedies (rule 108, para. 3). Within six months after the transmittal to the State party of a decision of the Committee declaring a communication admissible, the State party shall submit written explanations or statements to the Committee clarifying the matter under consideration and the remedy, if any, which has been taken by it (rule 110, para. 2). In cases that require expeditious consideration, the Committee invites the States parties concerned, if they have no objections to the admissibility of the communications, to furnish immediately their observations on the merits of the case.

198. The Committee concludes its consideration of an admissible communication by formulating its Views thereon in the light of all information made available to it by the complainant and the State party. The Views of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 111, paragraph 3, of the rules of procedure of the Committee) and are made available to the general public. Generally the text of the Committee's decisions declaring communications inadmissible under article 22 of the Convention are also made public without disclosing the identity of the author of the communication but identifying the State party concerned.

199. Pursuant to rule 112 of its rules of procedure, the Committee shall include in its annual report a summary of the communications examined. The Committee may also include in its annual report the text of its Views under article 22, paragraph 7, of the Convention and the text of any decision declaring a communication inadmissible.

200. At the time of adoption of the present report the Committee had registered 183 communications with respect to 20 countries. Of them, 52 communications had been discontinued and 35 had been declared inadmissible. The Committee had adopted Views with respect to 56 communications and found violations of the Convention in 20 of them. Finally, 40 communications remained outstanding.

201. At its twenty-fifth session, the Committee decided to discontinue consideration of four communications, suspended the consideration of two others and declared one communication admissible, to be examined on the merits. In addition, the Commission declared inadmissible communication No. 160/2000 (R.M. v. Spain) under rule 107.1 (c) of the Committee's rules of procedure. The text of this decision is reproduced in annex VII, section B, to the present report.

202. Also at its twenty-fifth session, the Committee adopted Views in respect of communications Nos. 122/1998 (M.R.P. v. Switzerland), 144/1999 (A.M. v. Switzerland) and 149/1999 (A.S. v. Sweden). The texts of the Committee's Views are reproduced in annex VII, section A, to the present report.

203. In its Views on communication No. 122/1998 (M.R.P. v. Switzerland), the Committee found that the information before it did not provide sufficient grounds for believing that the author ran a personal risk of being tortured if he was sent back to Bangladesh, his country of origin. The Committee therefore concluded that the decision of the State party to return the author to Bangladesh did not breach article 3 of the Convention.

204. In its Views on communication No. 144/1999 (A.M. v. Switzerland), the Committee found that the author had not furnished sufficient evidence that he would run a personal, real and foreseeable risk of being tortured if he was sent back to Chad, his country of origin. The Committee therefore concluded that the decision of the State party to return the author to Chad did not breach article 3 of the Convention.

205. In its Views on communication 149/1999 (A.S. v. Sweden), the Committee considered that, although the State party had found that the author had not fulfilled her obligation to submit verifiable information in order to prove her claim that she would be tortured if returned to her country of origin, the author had submitted sufficient reliable information regarding the fact that she was forced into a sighe or mutah marriage, committed adultery, was arrested and subsequently sentenced to stoning and that the State party had not made sufficient effort to determine whether there were substantial grounds for believing that the author would be in danger of being subjected to torture if returned to the Islamic Republic of Iran. Moreover, considering that the author's account of events was consistent with the Committee's knowledge about the current human rights situation in the Islamic Republic of Iran, the Committee was of the view that, in the prevailing circumstances, the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to the Islamic Republic of Iran or to any other country where she ran a risk of being expelled or returned to the Islamic Republic of Iran.

206. At its twenty-sixth session, the Committee decided to discontinue consideration of two communications and declared one communication admissible, to be considered on the merits.

207. Also at its twenty-sixth session, the Committee adopted Views in respect of communications Nos. 49/1996 (S.V. v. Canada), 113/1998 (Radivoje Ristic v. Yugoslavia), 123/1998 (Z.Z. v. Canada), 128/1999 (F. v. Switzerland), 134/1999 (M.O. v. The Netherlands), 142/1999 (S.S. and S.A. v. The Netherlands), 147/1999 (Y.S. v. Switzerland) and 150/1999 (S.S. v. Sweden). The text of the Committee's Views are reproduced in annex VII, section A, to the present report.

208. In its Views on communication No. 49/1996 (S.V. v. Canada), the Committee considered that the author had not substantiated his claim under article 3 of the Convention that he would be at risk of being subjected to torture upon return to Sri Lanka. In the same Views, the Committee observed that article 3 only covered situations of torture as defined in article 1 of the Convention; and, with regard to the author's claim under article 16, it held that the author had

not substantiated his allegation that the decision to remove him and his family to his country of origin would in itself amount to an act of cruel, inhuman or degrading treatment or punishment.

209. In its Views on communication No. 113/1998 (Radivoje Ristic v. Yugoslavia), the Committee considered that the State party had violated its obligations under articles 12 and 13 of the Convention to investigate promptly and effectively allegations of torture or severe police brutality.

210. In its Views on communications Nos. 123/1998 (Z.Z. v. Canada), 128/1999 (F. v. Switzerland), 134/1999 (M.O. v. The Netherlands), 142/1999 (S.S. and S.A. v. The Netherlands), 147/1999 (Y.S. v. Switzerland) and 150/1999 (S.S. v. Sweden), the Committee considered that the authors of the communications had not substantiated their claim that they would risk being subjected to torture upon return to their countries of origin. The Committee therefore concluded in each case that the removal of the authors to those countries would not breach article 3 of the Convention.

VII. FUTURE MEETINGS OF THE COMMITTEE

211. In accordance with rule 2 of its rules of procedure, the Committee normally holds two regular sessions each year. Regular sessions of the Committee are convened at dates decided by the Committee in consultation with the Secretary-General, taking into account the calendar of conferences as approved by the General Assembly.

212. As the calendar of meetings held within the framework of the United Nations is submitted by the Secretary-General on a biennial basis for the approval of the Committee on Conferences and the General Assembly, the Committee took decisions on the dates of its regular sessions for the biennium 2002-2003. Those dates are the following:

Twenty-eighth session	29 April-17 May 2002
Twenty-ninth session	11-22 November 2002
Thirtieth session	28 April-16 May 2003
Thirty-first session	10-21 November 2003

213. Should the General Assembly endorse the decision of the Committee to establish a pre-sessional working group, the dates of the sessions of the group in 2002 and 2003 would be as follows:

22-26 April 2002

4-8 November 2002

22-25 April 2003

3-7 November 2003

VIII. DISCUSSION ON THE SITUATION OF THE OCCUPIED PALESTINIAN TERRITORY IN THE LIGHT OF ARTICLE 16 OF THE CONVENTION

214. On 22 November 2000, the Committee held a preliminary exchange of views on the above subject at the request of Mr. El Masry, who proposed that Israel should submit a special report. The Committee, however, decided to postpone the discussion of the question to its twenty-sixth session.

215. On 16 May 2001 the Committee again held an exchange of views on the issue. As a result, it decided to consider the third periodic report of Israel at its twenty-seventh session in November 2001. The Committee also decided to request an opinion from the United Nations Legal Counsel on the question of the applicability of the Convention in the occupied Palestinian territory.

IX. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE

216. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for appropriate transmission to the General Assembly during the same calendar year.

217. Accordingly, at its 484th meeting, held on 18 May 2001, the Committee considered and unanimously adopted the report on its activities at the twenty-fifth and twenty-sixth sessions. An account of the activities of the Committee at its twenty-seventh session (12-23 November 2001) will be included in the annual report of the Committee for 2002.

Annex I

States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 18 May 2001

State	Date of signature	Date of receipt of the instrument of ratification or accession
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1984[a]
Algeria	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		6 March 1992[b]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Comoros	22 September 2000	
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1996[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988

[a] Accession

[b] Succession.

State	Date of signature	Date of receipt of the instrument of ratification or accession
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		8 October 1991[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	8 July 1991
Czech Republic		1 January 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1995	27 May 1987
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Greece	4 February 1985	6 October 1988
Ghana	7 September 2000	7 September 2000[a]
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989

State	Date of signature	Date of receipt of the instrument of ratification or accession
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998[a]
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lebanon		5 October 2000[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Malawi		11 June 1996[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritius		9 December 1992[a]
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991[a]
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999
Namibia		28 November 1994[a]
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Niger		5 October 1998[a]
Nigeria	28 July 1988	
Norway	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000

State	Date of signature	Date of receipt of the instrument of ratification or accession
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	25 April 2001
Slovakia		29 May 1993[a]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Tajikistan		11 January 1995[a]
The former Yugoslav Republic of Macedonia		12 December 1994[a]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Yugoslavia	18 April 1989	10 September 1991
Zambia		7 October 1998[a]

Annex II

States parties that have declared, at the time of ratification or accession, that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 18 May 2001[a]

Afghanistan

Belarus

China

Cuba

Israel

Kuwait

Morocco

Saudi Arabia

Ukraine

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[a] Total of nine States parties.

Annex III

States parties that have made the declarations provided for in articles 21 and 22 of the Convention,[a] as at 18 May 2001[b]

State party	Date of entry into force
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	24 July 1987
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Ghana	7 October 2000
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Netherlands	20 January 1989

[a] Japan, the United Kingdom of Great Britain and Northern Ireland and the United States of America made only the declarations provided for in article 21 of the Convention.

[b] Total of 43 States parties.

State party	Date of entry into force
New Zealand	9 January 1990
Norway	26 June 1987
Poland	12 June 1993
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Slovakia	17 April 1995
Slovenia	16 July 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Venezuela	26 April 1994
Yugoslavia	10 October 1991

Annex IV

Membership of the Committee against Torture in 2001

Name of members	Country of nationality	Term expires on 31 December
Mr. Peter Thomas BURNS	Canada	2003
Mr. Guibril CAMARA	Senegal	2003
Mr. Sayed Kassem EL MASRY	Egypt	2001
Ms. Felice GAER	United States of America	2003
Mr. Alejandro GONZÁLEZ POBLETE	Chile	2003
Mr. Andreas MOVROMMATIS	Cyprus	2003
Mr. António SILVA HENRIQUES GASPER	Portugal	2001
Mr. Ole Vedel RASMUSSEN	Denmark	2001
Mr. Alexander M. YAKOVLEV	Russian Federation	2001
Mr. YU Mengjia	China	2001

Annex V

Status of submission of reports by States parties under article 19 of the Convention, as at 18 May 2001

A. Initial reports

Initial reports due in 1988 (27)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Afghanistan	26 June 1987	25 June 1988	21 January 1992	CAT/C/5/Add.31
Argentina	26 June 1987	25 June 1988	15 December 1988	CAT/C/5/Add.12/Rev.1
Austria	28 August 1987	27 August 1988	10 November 1988	CAT/C/5/Add.10
Belarus	26 June 1987	25 June 1988	11 January 1989	CAT/C/5/Add.14
Belize	26 June 1987	25 June 1988	18 April 1991	CAT/C/5/Add.25
Bulgaria	26 June 1987	25 June 1988	12 September 1991	CAT/C/5/Add.28
Cameroon	26 June 1987	25 June 1988	15/2/89 and 25/4/91	CAT/C/5/Add.16 and 26
Canada	24 July 1987	23 July 1988	16 January 1989	CAT/C/5/Add.15
Denmark	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.4
Egypt	26 June 1987	25 June 1988	26/7/88 and 20/11/90	CAT/C/5/Add.5 and 23
France	26 June 1987	25 June 1988	30 June 1988	CAT/C/5/Add.2
German Democratic Republic	9 October 1987	8 October 1988	19 December 1988	CAT/C/5/Add.13
Hungary	26 June 1987	25 June 1988	25 October 1988	CAT/C/5/Add.9
Luxembourg	29 October 1987	28 October 1988	15 October 1991	CAT/C/5/Add.29
Mexico	26 June 1987	25 June 1988	10/8/88 and 13/2/90	CAT/C/5/Add.7 and 22

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Norway	26 June 1987	25 June 1988	21 July 1988	CAT/C/5/Add.3
Panama	23 September 1987	22 September 1988	28 January 1991	CAT/C/5/Add.24
Philippines	26 June 1987	25 June 1988	26/7/88 and 28/4/89	CAT/C/5/Add.6 and 18
Russian Federation	26 June 1987	25 June 1988	6 December 1988	CAT/C/5/Add.11
Senegal	26 June 1987	25 June 1988	30 October 1989	CAT/C/5/Add.19 (Replacing Add.8)
Spain	20 November 1987	19 November 1988	19 March 1990	CAT/C/5/Add.21
Sweden	26 June 1987	25 June 1988	23 June 1988	CAT/C/5/Add.1
Switzerland	26 June 1987	25 June 1988	14 April 1989	CAT/C/5/Add.17
Togo	18 December 1987	17 December 1988		
Uganda	26 June 1987	25 June 1988		
Ukraine	26 June 1987	25 June 1988	17 January 1990	CAT/C/5/Add.20
Uruguay	26 June 1987	25 June 1988	6/6/91 and 5/12/91	CAT/C/5/Add.27 and 30

Initial reports due in 1989 (10)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chile	30 October 1988	29 October 1989	21/9/89 and 5/11/90	CAT/C/7/Add.2 and 9
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5 and 14
Colombia	7 January 1988	6 January 1989	24/4/89 and 28/8/90	CAT/C/7/Add.1 and 10
Czech and Slovak Federal Republic	6 August 1988	5 August 1989	21/11/89 and 14/5/91	CAT/C/7/Add.4 and 12
Ecuador	29 April 1988	28 April 1989 and 26/9/91	27/6/90 and 28/2/91	CAT/C/7/Add.7 and 11 and 13

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Greece	5 November 1988	4 November 1989	8 August 1990	CAT/C/7/Add.8
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989	9/11/92 and 22/2/94	CAT/C/7/Add.15 and 16
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6

Initial reports due in 1990 (11)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Algeria	12 October 1989	11 October 1990	13 February 1991	CAT/C/9/Add.5
Australia	7 September 1989	6 September 1990	27/8/91-11/6/92	CAT/C/9/Add.8 and 11
Brazil	28 October 1989	27 October 1990	26 May 2000	CAT/C/9/Add.16
Finland	29 September 1989	28 September 1990	28 September 1990	CAT/C/9/Add.4
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990	30 December 1991	CAT/C/9/Add.9
Libyan Arab Jamahiriya	15 June 1989	14 June 1990	14/5/91-27/8/92	CAT/C/9/Add.7 and 12/Rev.1
Netherlands	20 January 1989	19 January 1990	14/3-11/9-13/9/90	CAT/C/9/Add.13
Poland	25 August 1989	24 August 1990	22 March 1993	CAT/C/9/Add.13
Portugal	11 March 1989	10 March 1990	7 May 1993	CAT/C/9/Add.15
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990	22/3/91-30/4/92	CAT/C/9/Add.6,10 and 14

Initial reports due in 1991 (7)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Germany	31 October 1990	30 October 1991	9 March 1992	CAT/C/12/Add.1
Guatemala	4 February 1990	3 February 1991	2/11/94 and 31/7/95	CAT/C/12/Add.5 and 6
Liechtenstein	2 December 1990	1 December 1991	5 August 1994	CAT/C/12/Add.4
Malta	13 October 1990	12 October 1991	3 January 1996	CAT/C/12/Add.7
New Zealand	9 January 1990	8 January 1991	29 July 1992	CAT/C/12/Add.2
Paraguay	11 April 1990	10 April 1991	13 January 1993	CAT/C/12/Add.3
Somalia	23 February 1990	22 February 1991		

Initial reports due in 1992 (10)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Croatia	8 October 1991	7 October 1992	4 January 1996	CAT/C/16/Add.6
Cyprus	17 August 1991	16 August 1992	23 June 1993	CAT/C/16/Add.2
Estonia	20 November 1991	19 November 1992		
Israel	2 November 1991	1 November 1992	25 January 1994	CAT/C/16/Add.4
Jordan	13 December 1991	12 December 1992	23 November 1994	CAT/C/16/Add.5
Nepal	13 June 1991	12 June 1992	6 October 1993	CAT/C/16/Add.3
Romania	17 January 1991	16 January 1992	14 February 1992	CAT/C/16/Add.1
Venezuela	28 August 1991	27 August 1992	8 July 1998	CAT/C/16/Add.8
Yemen	5 December 1991	4 December 1992		
Yugoslavia	10 October 1991	9 October 1992	20 January 1998	CAT/C/16/Add.7

Initial reports due in 1993 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Benin	11 April 1992	10 April 1993	12 February 2001	CAT/C/21/Add.3
Bosnia and Herzegovina	6 March 1992	5 March 1993		
Cambodia	14 November 1992	13 November 1993		
Cape Verde	4 July 1992	3 July 1993		
Czech Republic	1 January 1993	31 December 1993	18 April 1994	CAT/C/21/Add.2
Latvia	14 May 1992	13 May 1993		
Monaco	5 January 1992	4 January 1993	14 March 1994	CAT/C/21/Add.1
Seychelles	4 June 1992	3 June 1993		

Initial reports due in 1994 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Antigua and Barbuda	18 August 1993	17 August 1994		
Armenia	13 October 1993	12 October 1994	20/4/95 and 21/12/95	CAT/C/24/Add.4 and Rev.1
Burundi	20 March 1993	19 March 1994		
Costa Rica	11 December 1993	10 December 1994	10 August 2000	CAT/C/24/Add.7
Mauritius	8 January 1993	7 January 1994	10/5/94-1/3/95	CAT/C/24/Add.1 and 3
Morocco	21 July 1993	20 July 1994	29 July 1994	CAT/C/24/Add.2
Slovakia	28 May 1993	27 May 1994	1 May 2000	CAT/C/24/Add.6
Slovenia	15 August 1993	14 August 1994	10 August 1999	CAT/C/24/Add.5

Initial reports due in 1995 (7)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Albania	10 June 1994	9 June 1995		
Ethiopia	13 April 1994	12 April 1995		
Georgia	25 November 1994	24 November 1995	4 June 1996	CAT/C/28/Add.1
Namibia	28 December 1994	27 December 1995	23 August 1996	CAT/C/28/Add.2
Sri Lanka	2 February 1994	1 February 1995	27 October 1997	CAT/C/28/Add.3
The former Yugoslav Republic of Macedonia	12 December 1994	11 December 1995	22 May 1998	CAT/C/28/Add.4
United States of America	20 November 1994	19 November 1995	15 October 1999	CAT/C/28/Add.5

Initial reports due in 1996 (6)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chad	9 July 1995	8 July 1996		
Cuba	16 June 1995	15 June 1996	15 November 1996	CAT/C/32/Add.2
Republic of Korea	8 February 1995	7 February 1996	10 February 1996	CAT/C/32/Add.1
Republic of Moldova	28 December 1995	27 December 1996		
Tajikistan	10 February 1995	9 February 1996		
Uzbekistan	28 October 1995	27 October 1996	18 February 1999	CAT/C/32/Add.3

Initial reports due in 1997 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Azerbaijan	15 September 1996	14 September 1997	18 December 1998	CAT/C/37/Add.3
Côte d'Ivoire	17 January 1996	16 January 1997		
Democratic Republic of the Congo	17 April 1996	16 April 1997		
El Salvador	17 July 1996	16 July 1997	5 July 1999	CAT/C/37/Add.4
Iceland	22 November 1996	21 November 1997	12 February 1998	CAT/C/37/Add.2
Kuwait	7 April 1996	6 April 1997	5 August 1997	CAT/C/37/Add.1
Lithuania	2 March 1996	1 March 1997		
Malawi	11 July 1996	10 July 1997		

Initial reports due in 1998 (4)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Honduras	4 January 1997	3 January 1998		
Kenya	23 March 1997	22 March 1998		
Kyrgyzstan	5 October 1997	4 October 1998	9 February 1999	CAT/C/42/Add.1
Saudi Arabia	22 October 1997	21 October 1998	27 February 2001	CAT/C/42/Add.2

Initial reports due in 1999 (6)

ate party	Date of entry into force	Initial report date due	Date of submission	Symbol
ahrain	5 April 1998	4 April 1999		
angladesh	4 November 1998	3 November 1999		
donesia	27 November 1998	26 November 1999	7 February 2001	CAT/C/47/Add.3
azakhstan	25 September 1998	24 September 1999	15 August 2000	CAT/C/47/Add.1
iger	4 November 1998	3 November 1999		
ambia	6 November 1998	5 November 1999	1 December 2000	CAT/C/47/Add.2

Initial reports due in 2000 (8)

ate party	Date of entry into force	Initial report date due	Date of submission	Symbol
elgium	25 July 1999	25 July 2000		
olivia	12 May 1999	11 May 2000	16 May 2000	CAT/C/52/Add.1
urkina Faso	3 February 1999	2 February 2000		
pan	29 July 1999	29 July 2000		
ali	28 March 1999	27 March 2000		
ozambique	14 October 1999	14 October 2000		
outh Africa	9 January 1999	8 January 2000		
urkmenistan	25 July 1999	25 July 2000		

Initial reports due in 2001 (5)

ate party	Date of entry into force	Initial report date due	Date of submission	Symbol
tar	10 February 2000	9 February 2001		
ana	7 October 2000	6 October 2001		
tswana	8 October 2000	7 October 2001		
bon	8 October 2000	7 October 2001		
banon	4 November 2000	3 November 2001		

B. Second periodic reports

Second periodic reports due in 1992 (26)

State party	Second periodic report date due	Date of submission	Symbol
Afghanistan	25 June 1992		
Argentina	25 June 1992	29 June 1992	CAT/C/17/Add.2
Austria	27 August 1992	12 October 1998	CAT/C/17/Add.21
Belarus	25 June 1992	15 September 1992	CAT/C/17/Add.6
Belize	25 June 1992		
Bulgaria	25 June 1992	19 June 1998	CAT/C/17/Add.19
Cameroon	25 June 1992	20 November 1999	CAT/C/17/Add.22
Canada	23 July 1992	11 September 1192	CAT/C/17/Add.5
Denmark	25 June 1992	22 February 1995	CAT/C/17/Add.13
Egypt	25 June 1992	13 April 1993	CAT/C/17/Add.11
France	25 June 1992	19 December 1996	CAT/C/17/Add.18
Hungary	25 June 1992	23 September 1992	CAT/C/17/Add.8
Luxembourg	28 October 1992	3 August 1998	CAT/C/17/Add.20
Mexico	25 June 1992	21 July 1992 and 28 May 1996	CAT/C/17/Add.3 and Add.17
Norway	25 June 1992	25 June 1992	CAT/C/17/Add.1
Panama	22 September 1992	21 September 1992	CAT/C/17/Add.7
Philippines	25 June 1992		
Russian Federation	25 June 1992	17 January 1996	CAT/C/17/Add.15
Senegal	25 June 1992	27 March 1995	CAT/C/17/Add.14
Spain	19 November 1992	19 November 1992	CAT/C/17/Add.10
Sweden	25 June 1992	30 September 1992	CAT/C/17/Add.9
Switzerland	25 June 1992	28 September 1993	CAT/C/17/Add.12
Togo	17 December 1992		
Uganda	25 June 1992		
Ukraine	25 June 1992	31 August 1992	CAT/C/17/Add.4
Uruguay	25 June 1992	25 March 1996	CAT/C/17/Add.16

Second periodic reports due in 1993 (9)

State party	Second periodic report date due	Date of submission	Symbol
Chile	29 October 1993	16 February 1994	CAT/C/20/Add.3
China	2 November 1993	2 December 1995	CAT/C/20/Add.5
Colombia	6 January 1993	4 August 1995	CAT/C/20/Add.4
Ecuador	28 April 1993	21 April 1993	CAT/C/20/Add.1
Greece	4 November 1993	6 December 1993	CAT/C/20/Add.2
Guyana	17 June 1993		
Peru	5 August 1993	20 January 1997	CAT/C/20/Add.6
Tunisia	22 October 1993	10 November 1997	CAT/C/20/Add.7
Turkey	31 August 1993		

Second periodic reports due in 1994 (11)

State party	Second periodic report date due	Date of submission	Symbol
Algeria	11 October 1994	23 February 1996	CAT/C/25/Add.8
Australia	6 September 1994	19 October 1999	CAT/C/25/Add.11
Brazil	27 October 1994		
Finland	28 September 1994	11 September 1995	CAT/C/25/Add.7
Guinea	8 November 1994		
Italy	10 February 1994	20 July 1994	CAT/C/25/Add.4
Libyan Arab Jamahiriya	14 June 1994	30 June 1994	CAT/C/25/Add.3
Netherlands	19 January 1994 and 27/3/95	14/4/94 and 16/6/94	CAT/C/25/Add.1,2 and 5
Poland	24 August 1994	7 May 1996	CAT/C/25/Add.9
Portugal	10 March 1994	7 November 1996	CAT/C/25/Add.10
United Kingdom of Great Britain and Northern Ireland	6 January 1994	25 March 1995	CAT/C/25/Add.6

Second periodic reports due in 1995 (7)

State party	Second periodic report date due	Date of submission	Symbol
Germany	30 October 1995	17 December 1996	CAT/C/29/Add.2
Guatemala	3 February 1995	13 February 1997	CAT/C/29/Add.3
Liechtenstein	1 December 1995	3 September 1998	CAT/C/29/Add.5
Malta	12 October 1995	29 September 1998	CAT/C/29/Add.6
New Zealand	8 January 1995	25 February 1997	CAT/C/29/Add.4
Paraguay	10 April 1995	10 July 1996	CAT/C/29/Add.1
Somalia	22 February 1995		

Second periodic reports due in 1996 (10)

State party	Second periodic report date due	Date of submission	Symbol
Croatia	7 October 1996	5 March 1998	CAT/C/33/Add.4
Cyprus	16 August 1996	12 September 1996	CAT/C/33/Add.1
Estonia	19 November 1996		
Israel	1 November 1996	6 December 1996 and 7 February 1997 (special report)	C/33/Add.2/Rev.1
Jordan	12 December 1996	26 February 1998	CAT/C/33/Add.3
Nepal	12 June 1996		
Romania	16 January 1996		
Venezuela	27 August 1996	1 September 2000	CAT/C/33/Add.5
Yemen	4 December 1996		
Yugoslavia	9 October 1996		

Second periodic reports due in 1997 (8)

State party	Second periodic report date due	Date of submission	Symbol
Benin	10 April 1997		
Bosnia and Herzegovina	5 March 1997		
Cambodia	13 November 1997		
Cape Verde	3 July 1997		
Czech Republic	31 December 1997	14 February 2000	CAT/C/38/Add.1

State party	Second periodic report date due	Date of submission	Symbol
Latvia	13 May 1997		
Monaco	4 January 1997		
Seychelles	3 June 1997		

Second periodic reports due in 1998 (8)

State party	Second periodic report date due	Date of submission	Symbol
Antigua and Barbuda	17 August 1998		
Armenia	12 October 1998	15 June 1999	CAT/C/43/Add.3
Burundi	19 March 1998		
Costa Rica	10 December 1998		
Mauritius	7 January 1998	8 June 1998	CAT/C/43/Add.1
Morocco	20 July 1998	2 September 1998	CAT/C/43/Add.2
Slovakia	27 May 1998		
Slovenia	14 August 1998		

Second periodic reports due in 1999 (7)

State party	Second periodic report date due	Date of submission	Symbol
Albania	9 June 1999		
Ethiopia	12 April 1999		
Georgia	24 November 1999	15 November 1999	CAT/C/48/Add.1
Namibia	27 December 1999		
Sri Lanka	1 February 1999		
The former Yugoslav Republic of Macedonia	11 December 1999		
United States of America	19 November 1999		

Second periodic reports due in 2000 (6)

State party	Second periodic report date due	Date of submission	Symbol
Chad	8 July 2000		
Cuba	15 June 2000		
Republic of Korea	7 February 2000		
Republic of Moldova	27 December 2000		
Tajikistan	9 February 2000		
Uzbekistan	27 October 2000	29 November 2000	CAT/C/53/Add.1

Second periodic reports due in 2001 (8)

State party	Second periodic report date due	Date of submission	Symbol
Azerbaijan	14 September 2001		
Côte d'Ivoire	16 January 2001		
Democratic Republic of the Congo	16 April 2001		
El Salvador	16 July 2001		
Iceland	21 November 2001		
Kuwait	6 April 2001		
Lithuania	1 March 2001		
Malawi	10 July 2001		

C. Third periodic reports

Third periodic reports due in 1996 (26)

State party	Third periodic report date due	Date of submission	Symbol
Afghanistan	25 June 1996		
Argentina	25 June 1996	26 September 1996	CAT/C/34/Add.5
Austria	27 August 1996		
Belarus	25 June 1996	29 September 1999	CAT/C/34/Add.12
Belize	25 June 1996		

State party	Third periodic report date due	Date of submission	Symbol
Bulgaria	25 June 1996		
Cameroon	25 June 1996		
Canada	23 July 1996	19 October 1999	CAT/C/34/Add.13
Denmark	25 June 1996	5 July 1996	CAT/C/34/Add.3
Egypt	25 June 1996	30 October 1998	CAT/C/34/Add.11
France	25 June 1996		
Hungary	25 June 1996	21 April 1998	CAT/C/34/Add.10
Luxembourg	28 October 1996	30 October 2000	CAT/C/34/Add.14
Mexico	25 June 1996	25 June 1996	CAT/C/34/Add.2
Norway	25 June 1996	6 February 1997	CAT/C/34/Add.8
Panama	22 September 1996	19 May 1997	CAT/C/34/Add.9
Philippines	25 June 1996		
Russian Federation	25 June 1996	5 December 2000	CAT/C/34/Add.15
Senegal	25 June 1996		
Spain	19 November 1996	18 November 1996	CAT/C/34/Add.7
Sweden	25 June 1996	23 August 1996	CAT/C/34/Add.4
Switzerland	25 June 1996	7 November 1996	CAT/C/34/Add.6
Togo	17 December 1996		
Uganda	25 June 1996		
Ukraine	25 June 1996	19 June 1996	CAT/C/34/Add.1
Uruguay	25 June 1996		

Third periodic reports due in 1997 (9)

State party	Third periodic report date due	Date of submission	Symbol
Chile	29 October 1997		
China	2 November 1997	5 May 1999	CAT/C/39/Add.2
Colombia	6 January 1997		
Ecuador	28 April 1997		
Greece	4 November 1997	29 November 1999	CAT/C/39/Add.3
Guyana	17 June 1997		
Peru	5 August 1997	12 December 1998	CAT/C/39/Add.1
Tunisia	22 October 1997		
Turkey	31 August 1997		

Third periodic reports due in 1998 (11)

State party	Third periodic report date due	Date of submission	Symbol
Algeria	11 October 1998		
Australia	6 September 1998		
Brazil	27 October 1998		
Finland	28 September 1998	16 November 1998	CAT/C/44/Add.6
Guinea	8 November 1998		
Italy	10 February 1998	22 July 1998	CAT/C/44/Add.2
Libyan Arab Jamahiriya	14 June 1998	2 September 1998	CAT/C/44/Add.3
Netherlands	19 January 1998	3 September 1998 and 27 December 1999	CAT/C/44/Add.4 and 8
Poland	24 August 1998	11 November 1998	CAT/C/44/Add.5
Portugal	10 March 1998	2 February 1999	CAT/C/44/Add.7
United Kingdom of Great Britain and Northern Ireland	6 January 1998	2 April 1998	CAT/C/44/Add.1

Third periodic reports due in 1999 (7)

State party	Third periodic report date due	Date of submission	Symbol
Germany	30 October 1999		
Guatemala	3 February 1999	18 January 2000	CAT/C/49/Add.2
Liechtenstein	1 December 1999		
Malta	12 October 1999		
New Zealand	8 January 1999		
Paraguay	10 April 1999	14 June 1999	CAT/C/49/Add.1
Somalia	22 February 1999		

Third periodic reports due in 2000 (10)

State party	Third periodic report date due	Date of submission	Symbol
Croatia	7 October 2000		
Cyprus	16 August 2000		
Estonia	19 November 2000		
Israel	1 November 2000	15 March 2001	CAT/C/54/Add.1
Jordan	12 December 2000		
Nepal	12 June 2000		
Romania	16 January 2000		
Venezuela	27 August 2000		
Yemen	4 December 2000		
Yugoslavia	9 October 2000		

Third periodic reports due in 2001 (8)

State party	Third periodic report date due	Date of submission	Symbol
Benin	10 April 2001		
Bosnia and Herzegovina	5 March 2001		
Cambodia	13 November 2001		
Cape Verde	3 July 2001		
Czech Republic	31 December 2001		
Latvia	13 May 2001		
Monaco	4 January 2001		
Seychelles	3 June 2001		

D. Fourth periodic reports

Fourth periodic reports due in 2000 (26)

State party	Fourth periodic report date due	Date of submission	Symbol
Afghanistan	25 June 2000		
Argentina	25 June 2000		
Austria	27 August 2000		
Belarus	25 June 2000		
Belize	25 June 2000		

State party	Fourth periodic report date due	Date of submission	Symbol
Bulgaria	25 June 2000		
Cameroon	25 June 2000		
Canada	23 July 2000		
Denmark	25 June 2000	4 August 2000	CAT/C/55/Add.2
Egypt	25 June 2000	19 February 2001	CAT/C/55/Add.6
France	25 June 2000		
Hungary	25 June 2000		
Luxembourg	28 October 2000		
Mexico	25 June 2000		
Norway	25 June 2000	15 September 2000	CAT/C/55/Add.4
Panama	22 September 2000		
Philippines	25 June 2000		
Russian Federation	25 June 2000		
Senegal	25 June 2000		
Spain	19 November 2000	8 January 2001	CAT/C/55/Add.5
Sweden	25 June 2000	21 August 2000	CAT/C/55/Add.3
Switzerland	25 June 2000		
Togo	17 December 2000		
Uganda	25 June 2000		
Ukraine	25 June 2000	31 July 2000	CAT/C/55/Add.1
Uruguay	25 June 2000		

Fourth periodic reports due in 2001 (9)

State party	Fourth periodic report date due	Date of submission	Symbol
Chile	29 October 2001		
China	2 November 2001		
Colombia	6 January 2001		
Ecuador	28 April 2001		
Greece	4 November 2001		
Guyana	17 June 2001		
Peru	5 August 2001		
Tunisia	22 October 2001		
Turkey	31 August 2001		

Annex VI

Country rapporteurs and alternate rapporteurs for the reports of States parties considered by the Committee at its twenty-fifth and twenty-sixth sessions

A. Twenty-fifth session

Report	Rapporteur	Alternate
Armenia: second periodic report (CAT/C/43/Add.3)	Mr. Camara	Mr. Yakovlev
Belarus: third periodic report (CAT/C/34/Add.12)	Ms. Gaer	Mr. Burns
Australia: second periodic report (CAT/C/25/Add.11)	Mr. Mavrommatis	Mr. Rasmussen
Canada: third periodic report (CAT/C/34/Add.13)	Ms. Gaer	Mr. El Masry
Cameroon: second periodic report (CAT/C/17/Add.22)	Mr. Camara	Mr. El Masry
Guatemala: third periodic report (CAT/C/49/Add.2)	Mr. Gonzalez Poblete	Mr. Rasmussen

B. Twenty-sixth session

Report	Rapporteur	Alternate
Georgia: second periodic report (CAT/C/48/Add.1)	Mr. Yakovlev	Mr. Mavrommatis
Greece: third periodic report (CAT/C/39/Add.3)	Mr. Burns	Mr. Rasmussen
Czech Republic: second periodic report (CAT/C/38/Add.1)	Mr. Mavrommatis	Mr. El Masry
Slovakia: initial report (CAT/C/24/Add.6)	Ms. Gaer	Mr. Yu Mengjia
Bolivia: initial report (CAT/C/52/Add.1)	Mr. Gonzalez Poblete	Mr. Silva Henriques Gaspar
Brazil: initial report (CAT/C/9/Add.16)	Mr. Silva Henriques Gaspar	Mr. Gonzalez Poblete
Costa Rica: initial report CAT/C/24/Add.7	Mr. Gonzalez Poblete	Mr. Rasmussen
Kazakhstan: initial report CAT/C/47/Add.1	Ms. Gaer	Mr. Yakovlev

Annex VII

Views and Decisions of the Committee against Torture under article 22 of the Convention

A. Views

Communication No. 49/1996

Submitted by:	S.V. et al. (name withheld) [represented by counsel]
Alleged victim:	The authors
State party:	Canada
Date of communication:	15 May 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 2001,

Having concluded its consideration of communication No. 49/1996, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The authors of the communication are Mr. S.V., his wife and daughter, citizens of Sri Lanka currently seeking refugee status in Canada. They claim that forcible return to Sri Lanka would constitute a violation of articles 3 and 16 of the Convention against Torture by Canada. They are represented by counsel.

1.2 On 12 June 1996 the Committee forwarded the communication to the State party for comments and requested it not to expel the authors while their communication was under consideration by the Committee.

The facts as submitted by the authors

2.1 The author is a Tamil from the area of Jaffna in the north of Sri Lanka. He and his wife have two children, an 8-year-old daughter and a 2-year-old son who was born in Canada and is a Canadian citizen. The authors claim that in the period from 1987 until their departure from Sri Lanka in 1992 they, and especially the author, suffered serious persecution from the Indian Peacekeeping Force (IPKF), the Liberation Tigers of Tamil Elam (LTTE), the

Sri Lankan Army (SLA) and the Colombo police. The author was arrested on several occasions and, in the course of at least two of them, he was tortured by the army and the police.

2.2 The author was a member of the Tamil United Liberation Front (TULF), which advocated the establishment of an autonomous Tamil state in Sri Lanka by peaceful means. In October 1987, a military conflict broke out between LTTE and IPKF. The author and his wife were forced to vacate their home, in Thirunelvely, Jaffna, to escape the bombing. When they returned to their home, they found that it had been occupied by IPKF members. When the author asked them to leave, they refused and accused him of being a member of LTTE.

2.3 In May 1988, the author was detained in a camp established on his own property by the Eelam People's Revolutionary Liberation Front, a militant Tamil group allied to IPKF. He was detained for 10 days, during which he was repeatedly assaulted and questioned about possible connections to LTTE.

2.4 In 1990, LTTE took control of the Tamil region. The author's property was appropriated by LTTE and he himself was threatened at gunpoint when he demanded that they vacate the property. He was then forced to abandon his home permanently and the family moved to Kaithady, Jaffna.

2.5 In December 1990, while travelling from Colombo to Jaffna, the author was detained by SLA in Vavuniya. He was questioned, accused of being a member of LTTE and brutally assaulted. Three days later he was beaten again in an attempt to extract a confession. His head was banged repeatedly against a wall until he fell unconscious. The authors claim that, as a result of this incident, the author suffered brain damage that has gravely impaired his ability to speak. Following this incident, the author went to Colombo seeking medical treatment.

2.6 In March 1991, after the assassination of the Sri Lankan Deputy Minister of Defence, the police began a round-up of all Tamil males in Colombo. The author, who had been staying with his cousin in Colombo, was arrested by four armed police officers on 4 March 1991. He was interrogated about his presence in Colombo and accused of being an LTTE member. He was repeatedly assaulted by the police with hands and rifle butts and stayed in detention for two days. He was released after the intervention of a lawyer retained by his cousin. His cousin advised the author that he could no longer reside with him as he feared further trouble with the police. The author returned to Jaffna.

2.7 On 18 February 1992, LTTE attempted to force the author to join the movement. When he refused, they ordered him to report to their office the next day. Should he fail to report, he was told that he would be considered an enemy of the Tamil people. The author understood this statement as a threat to kill him and fled for Colombo that evening.

2.8 On 3 March 1992, the lodge in which he was staying in Colombo was raided by the police and the author, along with other Tamil males, were arrested. He was taken to Wellawatte police station and questioned about his reasons for being in Colombo and his connections with LTTE. He was released the following day on condition that he report weekly to the police and not change his address in Colombo.

2.9 Henceforth, the author feared that he could at any time be arrested, interrogated and tortured on suspicion that he was a member of LTTE. He decided that his safety was no longer assured anywhere in Sri Lanka. He left for Canada on 13 March 1992 and arrived the following May.[1] He claimed Convention refugee status on the basis of persecution owing to his race, his political opinions and his membership in a particular social group.

2.10 The author's wife states that she was visited on several occasions in Jaffna by LTTE members looking for her husband. An LTTE member demanded that she pay 200,000 rupees as punishment for her husband's disobedience, giving her one month in which to come up with the money. As a result she fled with her daughter to Colombo. In Colombo she had to register with the police and her identity card was confiscated. She was accused of being an LTTE supporter. In August 1992, after a police round-up of Tamils, she decided that there was no safe place for herself and her daughter in Sri Lanka and she left for Canada in September 1992. Upon her arrival she claimed refugee status for herself and her daughter.

2.11 The Immigration and Refugee Board, after a hearing on 4 March 1993, found that the authors could not be accorded refugee status. First, the extortion activities of LTTE did not constitute persecution but rather harassment not causing undue hardship. Secondly, the authors had in Colombo an internal flight alternative; the Board found that there was no serious possibility of the author being persecuted in Colombo and therefore, it was not unreasonable that he could find refuge in that city.

2.12 By decision, dated 7 January 1994, the Federal Court Trial Division dismissed the family's application for leave to apply for judicial review in which they alleged errors of fact and of law in the Refugee Board's decision.

2.13 On 28 January 1994, the authors applied for a review by Canadian Immigration, under the Post-Determination Refugee Claimant in Canada programme (PDRCC), of the decision not to grant the authors refugee status. The purpose of PDRCC review is to identify individuals who, although determined not to be Convention refugees, face an objectively identifiable risk to life or inhumane treatment should they be returned to their country of origin.

2.14 The authors' application for PDRCC review was rejected on 9 November 1995. It was the view of the PDRCC officer that, although there were strong grounds for the authors' fearing to return to the north of Sri Lanka, an internal flight alternative existed in Colombo. He noted in particular that the assault by SLA which caused the author's medical problems had occurred near Jaffna. The arrests by the Colombo police were part of a pattern of general harassment of Tamils by the police which he felt did not constitute an "objectively identifiable risk", given that most detainees were released within three days though some had been required to pay bribes to obtain their release. He also indicated that part of the authors' extended family lived in Colombo and could facilitate their successful settlement in the city. In addition, the medical report indicating that the author suffered post-traumatic stress disorder which might be aggravated if he were to return to Sri Lanka had only been made on the basis of one visit to a doctor rather than in the context of ongoing treatment and was not specific concerning the conditions that could trigger recurrence of the trauma.

2.15 The authors made a further appeal on 13 May 1995 to the Minister of Immigration based on the Humanitarian and Compassionate Grounds procedure under section 114 (2) of the Immigration Act. On 9 December 1996 a negative decision was issued. An application for leave to apply for judicial review against that decision was dismissed by the Federal Court on 11 April 1997.

The complaint

3.1 The authors fear persecution and ill-treatment from the authorities in Sri Lanka given their past experiences and their absence from the country since 1992. They submit that in repatriating them Canada would violate article 3 of the Convention against Torture.

3.2 The authors provide medical evidence that the mental and physical injuries suffered by the author while in detention have had drastic long-term effects. He has difficulties in speaking and moving his neck and suffers symptoms of post-traumatic stress disorder (psychiatric medical reports are provided). They submit that, given these afflictions, the author would be particularly vulnerable to mistreatment and, further, would not receive the medical care he needs in Sri Lanka.

3.3 The authors further explain that their daughter, Nitarsha, is physically and mentally handicapped, suffering from cerebral palsy, right hemiparesis and an active seizure disorder. She requires special care, treatment and education. She would not receive those in Sri Lanka.

3.4 The authors submit that, given these medical conditions, the deportation of the family would amount to inhuman and degrading treatment on the part of the Canadian authorities in violation of article 16 of the Convention against Torture.

Observations by the State party on admissibility

4.1 By a note dated 9 June 1997 the State party contested the admissibility of the communication. It indicated that the authors did not seek judicial review of the decision of PDRCC and that this remedy might still be available if time for filing were extended by the Court. Moreover, if the authors were to succeed in an application for leave to apply for judicial review, the decision of the Federal Court Trial Division on the judicial review application could be further appealed to the Federal Court of Appeal, should the judge of the Trial Division certify that the case raises a serious question of general importance. Moreover, a decision of the Federal Court of Appeal could be appealed, with leave, to the Supreme Court of Canada.

4.2 On judicial review, the authors would be entitled to raise arguments under the Canadian Charter of Rights and Freedoms. In this regard, it is relevant to note that in the context of extradition the Supreme Court of Canada has held that section 7 of the Charter is violated by returning someone to a country in circumstances that would "shock the conscience of Canadians".

Counsel's comments on admissibility

5.1 In his reply, dated 28 April 1998, counsel indicated that the authors had applied for judicial review of the decision adopted by the Immigration and Refugee Board. However, leave to be heard on this question was refused by the Federal Court. There is no possibility of appealing that decision. It is the final step in the refugee determination procedure in which there is a judicial or quasi-judicial process that looks into the substance of the matter; all subsequent judicial controls look only into the procedures.

5.2 The post-determination review in November 1995 was negative. This procedure has been criticised by refugees, lawyers and church groups because it never results in a positive decision.

5.3 The only unresolved issue that is addressed by the State party is whether the refusal of PDRCC should have occasioned a request for judicial review by the Federal Court and whether this recourse can still be resorted to. Counsel pointed out that judicial review of the PDRCC procedure was not sought because of the lack of financial resources of the applicants and the futility of it. The jurisprudence of the Federal Court clearly establishes that the decision of the post-determination claims officer is an entirely discretionary decision and that the Court is only concerned with the procedural issues.

5.4 Instead of a request for judicial review, an appeal on humanitarian grounds covering the same questions in law was made. The issue of the post-traumatic stress was fully presented, as was the danger of return. The torture was fully documented and the immigration officer judged the story to be credible but refused to grant asylum because of the internal flight alternative.

5.5 The refusal of the appeal on humanitarian grounds was challenged in the Federal Court and leave was denied. According to the Court's constant jurisprudence, decisions like the one under review are discretionary and, therefore, the Court does not intervene on the substance of the cases, only on whether the procedures have been fair. All legal arguments were considered and disposed of by the Federal Court.

5.6 Counsel stated that it is objectively impossible to ask the Federal Court to litigate again on exactly the same questions. The Court would clearly consider that an abuse of the process.

5.7 The Canadian authorities concluded that the authors were at risk in the Jaffna peninsula, but that Colombo could be a safe haven for them. Counsel noted, however, that the author was severely mistreated by the police in Colombo in March 1991, that he was arrested arbitrarily in March 1992 and that there is a consistent pattern of arbitrary arrests, detention, and sometimes disappearances and extra-judicial executions of Tamils in Colombo.

5.8 The conclusion of the immigration officer in the humanitarian and compassionate review procedure was that risks were involved. He based his conclusion on the report of one of the doctors who examined the author according to which the latter suffers from post-traumatic stress disorder and his symptoms have increased as he is worried about being returned to Sri Lanka. In the doctor's opinion, the author would have great difficulty functioning in that country because of his neurological difficulties. In spite of this, application was refused on the grounds of

"medical inadmissibility" that the authors had not shown that they had established themselves economically in Canada. The family has been living on social assistance since their arrival in Canada and, given their circumstances, they might become a chronic welfare case.

5.9 In the medical report referred to by the immigration officer the doctor also indicates that some Tamil refugees he had examined stated that they were at greater risk in Sri Lanka if they had scars or signs of injury, as these could be regarded by the authorities as an indication that their injuries occurred while fighting with LTTE. The author's neurological limitations could be regarded as having been caused in this manner. If he were questioned by the authorities in Sri Lanka he would not be able to express himself verbally and someone who was unaware of his neurological limitations could regard this as being obstructive or antagonistic.

5.10 Counsel argued that neither the Government of Canada nor the Office of the United Nations High Commissioner for Refugees (UNHCR) evaluated the objective risk for the individuals in this particular case but only considered the question of deportations to Sri Lanka in general.

5.11 Counsel contended that returning a person who suffers from serious physical and mental damage as a result of human rights abuses to the country where he was subjected to those abuses constitutes inhuman treatment. The lack of medical care or proper psychiatric assistance in Sri Lanka could per se constitute a violation of article 16 of the Convention. Counsel, however, raised this as a circumstance aggravating the inhuman treatment involved in the deportation.

Committee's decision on admissibility

6.1 At its twentieth session, the Committee considered the admissibility of the communication. The Committee was of the opinion that once the Humanitarian and Compassionate Grounds procedure, including a leave application addressed to the Federal Court, was completed, all available domestic remedies had been exhausted. Accordingly, article 22, paragraph 5 (b), did not prevent it from considering the communication. The Committee considered that there was no other obstacle to the admissibility of the communication. It therefore decided that the communication was admissible.

Observations of the State party on the merits of the communication

7.1 According to the State party, the facts as presented by the authors were examined by a competent and independent domestic tribunal following a fair process, in accordance with Canada's refugee determination procedure. The State party also notes that the authors were represented by counsel during the course of the proceedings, interpretation was provided and the author's viva voce testimony was elicited.

7.2 It was the view of the Refugee Board that the central issue with respect to the author's situation is that he was released by the police. This clearly indicates that the author was not considered an LTTE member or sympathizer by the very authorities he fears. The Board stated in its reasons that it considered the authors' allegations concerning the beatings received at the hands of the Sri Lankan army and the medical reports he filed with the Board. However, the

Board noted that the definition of "Convention refugee" is forward-looking and past experiences, though relevant, are not determinative in the assessment. It states that this is also true of article 3 of the Convention against Torture.

7.3 Regarding the author's wife and child, the Board determined that they were not Convention refugees as they did not have problems when they were in Colombo. Furthermore, as their claims were joined with and dependent upon the author's claim, the Board determined that they were not Convention refugees.

7.4 With respect to the authors' application to PDRCC, the State party explains that, in most cases, the Convention refugee definition will overlap with article 3 of the Convention against Torture. In circumstances where there is no overlap, officials conducting the post-determination review must give consideration to article 3 of the Convention. In accordance with the criteria for these reviews, the post-determination officer reviewed the authors' written submissions prepared on their behalf by their lawyer, the documentation they attached and documentation on the situation in Sri Lanka. The submissions included evidence not produced at the time of the hearing before the Refugee Board, notably a medical report and a 1994 report by Amnesty International.[2]

7.5 Regarding the humanitarian and compassionate review of the case under section 114 (2) of the Immigration Act, the State party contends that the reviewing officer took into account all the submissions of the applicants and a wide range of circumstances, including the risk of unduly harsh or inhumane treatment in the country of return, current conditions in the country and new developments in Sri Lanka since the hearing before the Refugee Board and the PDRCC review. The immigration officer indicated that "risks were involved"[3] but did not confirm that torture was one of them. The risk assessment is not limited to the risk of torture.[4]

7.6 According to the State party, the above-mentioned national proceedings demonstrate no manifest error or unreasonableness and were not tainted by abuses of process, bad faith, manifest bias or serious irregularities. It also states that it is not for the Committee to evaluate the facts and evidence of a particular case.

7.7 In the State party's view, the communication reveals that the authors of the communication left their country because they feared LTTE or because they feared being caught between LTTE and the governmental authorities. Such fear does not suffice to substantiate a communication under the Convention. The authors also state in their submission - and this is confirmed in the medical report - that they feared torture at the hands of LTTE if they are returned to Sri Lanka. The author himself claimed that it was the order to join LTTE that prompted him to leave for Colombo in 1992. Consequently, the State party argues that, in the north of the country, the authors do not fear the Sri Lankan authorities but LTTE.

7.8 The State party submits that acts committed by LTTE do not fall under the competence of the Committee since the definition of "torture" in the Convention refers expressly to acts committed "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". Acts committed by LTTE cannot be attributed to the State and therefore are not covered by the Convention.

7.9 As to the alleged risk of torture at the hands of the State, the State party submits that the authors of the communication have not established substantial grounds to believe that, if the authors were deported to Sri Lanka, there is a personal, present or foreseeable risk of torture. It states that the authorities are not interested in the authors and makes the following points in this regard:

> Although the author claimed, before the Refugee Board, to be an ardent supporter of TULF, he never indicated that he was a member of this movement or had been involved in political activities. In any event, TULF is now represented in Parliament and supports peace initiatives taken by the Government;
>
> In his refugee application, the author claimed that he chose Canada because he was unable to go anywhere else. However, his Personal History Form, completed by him on his arrival into Canada, shows that he travelled to many different countries and for long periods, returning voluntarily to his country each time, even after the incidents in which he alleges that he had problems with the authorities. In particular, almost one year after his alleged torture by the army in December 1990, the author left his country for Singapore and returned voluntarily to Sri Lanka;
>
> The author travelled many times to Colombo and had no problems with the authorities except in March 1991 and March 1992. This establishes that the author is not suspected of complicity with LTTE;
>
> While the author claimed that he was tortured by the authorities when arrested in December 1990, March 1991 and March 1992 he has not provided any evidence to indicate that any pain suffered in March 1991 amounted to torture as defined by the Convention. Also, when last arrested in 1992, the event which is alleged to have prompted him to leave the country, the author was not beaten and was released the next day with the only obligation being to report to the authorities once a week;
>
> As to the author's physical condition, his wife stated that, apart from a longer period of questioning because of his speech difficulties, her husband had no other problem with the police when he was in Colombo. The author himself stated that the police were able to understand him when he spoke with them;
>
> As to the argument that the author would face torture because of his speech difficulties, the State party argues that this is mere conjecture and is based on the medical report which states that "(s)ome Tamil refugees, whom I have examined, have indicated that they believe that they are at risk in Sri Lanka if they have scars or signs of injury as these could be regarded by the authorities as an indication that their injuries had occurred while fighting with the LTTE". Such beliefs cannot constitute substantial grounds required by article 3 of the Convention;
>
> The author's wife has not herself been arrested by the authorities and she had no problem with the police in Sri Lanka. Therefore, there is a total lack of evidence that she was accused or suspected of being an LTTE supporter;

Contrary to the author's wife's claim, there is no evidence that her identity card was taken away by the Sri Lanka authorities. In any event, she was not arrested, detained, accused or asked to make any subsequent reports to the police;

In 1991, the author, and in 1992, his wife, legally obtained passports in Sri Lanka;

The authors have not claimed that persons in their immediate circle, notably family members, were arrested or tortured.

7.10 The State party refers to decisions of the Committee where the authors have failed to show that the danger is personal and present.[5] The State party also refers to a case decided by the European Court of Human Rights involving the removal of Sri Lankans. In that case the allegation of a violation of article 3 of the European Convention on Human Rights was dismissed as the plaintiffs did not establish that their personal position was any worse than that of other members of the Tamil community who were returning to their country. The mere possibility of ill-treatment was not in itself sufficient to foresee that they would be subjected to ill-treatment following their return.[6]

7.11 The State party submits that the communication rests mainly on the general situation of human rights in Sri Lanka. The authors do not link that general situation to their personal situation. As to the general situation in Sri Lanka, the report of the Working Group on Enforced or Involuntary Disappearances (1998) indicates that persons most often reported detained and missing were young Tamil men accused or suspected of belonging to, collaborating with, aiding or sympathizing with LTTE. The State party argues that the authors do not fall into this category.

7.12 Furthermore, it states that the information provided by UNHCR indicates that torture and other forms of mistreatment are not practised by the police and security authorities in Colombo. The United States Department of State Country Report for 1998 (dated February 1999) indicates that there were no reports of disappearances in Colombo and Jaffna. In March 1997, UNHCR reported that rejected asylum-seekers who arrived with national travel documents should have no problems when arriving at Colombo airport.

7.13 Moreover, the State party argues that in its assessment of the communication, the Committee should take into consideration the different measures taken by the Sri Lankan authorities to investigate and prevent acts of torture, as well as remedies available to the authors. In this context, the State party notes that, inter alia, all arrests and detentions must be reported to the Human Rights Commission (established in 1997) within 48 hours, the reports of three presidential commissions of inquiry into past disappearances have been made public, investigations into 485 of the 3,861 cases of alleged human rights violations have been completed and 150 alleged perpetrators charged in the High Court, and a 24-hour service to deal with public complaints of instances of harassment by elements in the security forces has been established by the Government.

7.14 With respect to the alleged violation of article 16 of the Convention, the State party argues that this article obliges States parties to apply the obligations contained in articles 10 to 13 to acts of cruel, inhuman or degrading treatment or punishment. As article 16 does not mention article 3, it does not create an obligation not to remove someone from a State in the circumstances described in that article.[7]

7.15 The State party is of the view that should article 16 of the Convention be found to apply where it is alleged that removal per se constitutes cruel, inhuman or degrading treatment or punishment, it should do so only in very exceptional circumstances. It is submitted that the aggravation of the author's state of health possibly caused by his deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention and attributable to the State party; reference is made in this regard to the Committee's decision in G.R.B. v. Sweden. Furthermore, article 16 of the Convention obliges States to prevent the proscribed treatment; it does not create a positive duty to provide medical care should the authors allegedly not receive comparable medical care in their home country. Further, it is submitted that there is no evidence that the required medical care in Sri Lanka is inadequate. Finally, article 16, paragraph 2, indicates that the provisions of the Convention are without prejudice to the provisions of national law which relate to expulsion.

Counsel's comments on the merits

8.1 Counsel contests the State party's assertion that this case was examined by "a competent and independent domestic tribunal". He claims that the Immigration and Refugee Board failed to appreciate both the facts of the case and the applicable law.

8.2 Counsel states that the most recent evidence available from Sri Lanka shows a situation of terrible human rights abuses in line with those described in article 3, paragraph 2, of the Convention against Torture. There have been several suicide bomb attacks in Colombo and other areas of the country. There has also been a major LTTE offensive in the north. There are reports of large-scale round-ups of Tamils in the centre and the capital of the country, as well as a serious resurgence of forced disappearances.[8]

8.3 Counsel refers to the Committee's general comment on article 3 of the Convention against Torture and argues that article 3 applies to the author's case as follows.

(a) There is a situation in Sri Lanka of a "consistent pattern of gross, flagrant or mass violations of human rights". The existence of torture with impunity, on a massive and systematic scale, is clear from any reading of the situation;

(b) The author has been mistreated in the past by agents of the Sri Lankan State. He has brain damage because of severe mistreatment by soldiers of the Sri Lankan army. He has been detained on more than one occasion in Colombo and mistreated by the police. This happened shortly before he left Colombo;

(c) There is independent medical and psychiatric evidence from doctors and psychiatrists associated with the Canadian Centre for Victims of Torture that establishes clearly that he is a torture victim. The torture has had a long-lasting effect on the author and his family;

(d) There is no substantive change in the situation in Sri Lanka since the author left the country. The situation at the time of counsel's submission is said to have been very serious and dangerous. A high level of repression and the legal arsenal that permits almost total impunity are firmly in place;

(e) The author was a supporter of the main Tamil party, TULF. He is from the north and he has suffered torture in the past. His situation as a torture victim in the past puts him greatly at risk today;

(f) The author is highly credible, with strong support from serious organizations in Canada. The original decision did not find against him on the issue of credibility;

(g) There is nothing incoherent or implausible about what the author says. His personal security and his life are at risk in Sri Lanka today.

8.4 Counsel also contests the assertion that the authors' main fear is of the Tamil Tigers. Counsel contends that the jurisprudence cited by the Canadian authorities appears to relate to cases that were not substantiated or where the author in question was not previously subjected to torture or directly targeted.

8.5 Counsel states that it is untrue to say that there is no longer torture in Colombo. All of the international human rights reports that are available state the contrary. Even the Federal Court of Canada recognized, in its decision granting the stay, that there is a risk of irreparable harm for the author if he were sent back, as did the immigration agent examining his case.

Issues and proceedings before the Committee

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether or not the forced return of the authors to Sri Lanka would violate the obligation of Canada under article 3 of the Convention not to expel a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

9.3 In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individuals concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

9.4 The Committee recalls its general comment on the implementation of article 3, which reads:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

9.5 The Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee considers that the issue of whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention. Consequently, the issue, on which the authors base part of their claim that they would suffer torture by LTTE or other non-governmental entities on return to Sri Lanka, cannot be considered by the Committee.

9.6 With respect to the possibility of the author suffering torture at the hands of the State on return to Sri Lanka, the Committee notes the author's allegations that he was tortured by the Sri Lankan army in December 1990 and that this treatment, which left him disabled, amounted to torture in terms of article 3 of the Convention. It also notes the allegations that he was maltreated by the police in Colombo in 1991. However, the Committee also notes the State party's contention, unchallenged by the author, that he left Sri Lanka regularly and always returned, even after the incident in December 1990. The Committee notes that with respect to the incident in March 1992, which according to the author was the reason for his departure, he was not maltreated and was released by the authorities. Furthermore, the author has not indicated that since that period he has been sought by the authorities. In fact, the author has not alleged to have been engaged in political or other activity within or outside the State, or alleged any other circumstance which would appear to make him particularly vulnerable to the risk of being placed in danger of torture. For the above-mentioned reasons, the Committee finds that the author has not provided substantial grounds for believing that he would be in danger of being tortured were he to be returned to Sri Lanka and that such danger is personal and present.

9.7 Similarly, the author's wife and their daughter have never been arrested or subjected to torture. The obligation to register at the police station at Colombo and the allegation, challenged by the State party, that the police took her identity card are not substantial grounds for believing that they would be in danger of being subjected to torture were they to be returned to Sri Lanka and that such danger is personal and present.

9.8 The Committee recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In light of the foregoing, the Committee deems that such a risk has not been established by the authors. Moreover, the Committee observes that article 3 applies only to situations of torture as defined in article 1 of the Convention.

9.9 With regard to the authors' allegation that the decision to expel them would in itself constitute an act of cruel, inhuman or degrading treatment or punishment in contravention of article 16 of the Convention, the Committee notes that the authors have not submitted sufficient evidence in substantiation of this claim.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the authors' removal to Sri Lanka by the State party would not constitute a breach of article 3 or article 16 of the Convention.

Notes

[1] According to the State party, the author went first to Malaysia, where he stayed until 16 May 1992, then to Singapore on 16 May 1992 and finally arrived in Canada on 19 May 1992. The author did not claim protection in either of the first two countries.

[2] The State party provides an explanation of this procedure in its PDRCC Guidelines.

[3] The State party does not say what the specific risks were in relation to this case.

[4] The State party has provided the text "Immigration Applications in Canada made on Humanitarian or Compassionate (H&C) Grounds", which describes this procedure in detail.

[5] X v. The Netherlands (036/1995), J.U.A. v. Switzerland (100/1997), H.D. v. Switzerland (112/1998), S.M.R. and M.M.R. v. Switzerland (103/1998).

[6] The State party does not provide the name or the registration number of this case.

[7] Travaux préparatoires of the Convention.

[8] Reports of Amnesty International and other organizations are provided by counsel in support of this argument.

Communication No. 113/1998

Submitted by: Radivoje Ristic
[represented by counsel]

Alleged victim: Milan Ristic (deceased)

State party: Yugoslavia

Date of communication: 22 July 1998

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 May 2001,

Having concluded its consideration of communication No. 113/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication, dated 22 July 1998, is Mr. Radivoje Ristic, a citizen of Yugoslavia, currently residing in Šabac, Yugoslavia. He claims that an act of torture resulting in the death of his son, Milan Ristic, was committed by the police and that the authorities have failed to carry out a prompt and impartial investigation. The communication was transmitted to the Committee, on behalf of Mr. Ristic, by the Humanitarian Law Center, a non-governmental organization based in Belgrade.

The facts as submitted by the author

2.1 The author alleges that on 13 February 1995 three policemen (Dragan Riznic, Uglješa Ivanovic and Dragan Novakovic) arrested Milan Ristic in Šabac while looking for a murder suspect. One of the officers struck his son with a blunt object, presumably a pistol or rifle butt, behind the left ear, killing him instantly. The officers moved the body and, with a blunt instrument, broke both thighbones. It was only then that they called an ambulance and the on-duty police investigation team, which included a forensic technician.

2.2 The policemen told the investigators that Milan Ristic had committed suicide by jumping from the roof of a nearby building and that they had an eyewitness to that effect (Dragan Markovic). The medical doctor who came with the ambulance pronounced Milan Ristic dead. The ambulance then left, leaving the body to be collected by a mortuary van. The author claims that after the departure of the ambulance the policemen struck the deceased on the chin, causing injury to his face.

2.3 The author provides a copy of the autopsy report, which concluded that the death was violent and caused by an injury to the brain as a result of a fall on a hard surface. The fall also explained the fractures described in the report. The author also provides a copy of the report by the doctor who came with the ambulance. That report says: "By exterior examination I found weak bleeding from the injury behind the left ear. Through the trousers above the right knee an open fracture of thighbone could be seen with small blood signs; around the wound there were no traces of blood."

2.4 The author contends that the medical reports do not fully tally with each other. The ambulance doctor explicitly states that he noticed no injuries on the face while the autopsy report lists a laceration and bruise on the chin. He challenges the reports, noting that it is hardly possible that a person could fall from a height of 14.65 metres without suffering any injury to the face, heels, pelvis, spine or internal organs and without internal haemorrhaging, leaving only bruises on the left elbow and behind the left ear. Moreover, he notes that there was no blood on the ground.

2.5 At the request of the parents, two forensic experts examined the autopsy report and found it superficial and contradictory, especially in the part referring to the cause of death. According to their report, the autopsy was not performed in accordance with the principles of forensic and medical science and practice and the conclusion is not in agreement with the findings. They proposed the exhumation of the remains and another autopsy by a forensic expert. The author further states that on 16 May 1995 they spoke with the pathologist who had performed the autopsy and visited the alleged scene of the incident. They noted that the autopsy report and the scene had nothing in common, which suggested that the body had been moved. In a written statement dated 18 July 1995 addressed to the Public Attorney's Office, the pathologist agreed that the remains should be exhumed for forensic examination and pointed out that, as he was not a specialist in forensic medicine, he might have made a mistake or missed some details.

2.6 The parents of the victim filed criminal charges against a number of police officers before the Public Prosecutor in Šabac. On 19 February 1996, the Public Prosecutor dismissed the charges. Under Yugoslav law, following dismissal of a criminal complaint, the victim or the person acting on his behalf may either request the institution of investigative proceedings or file an indictment and proceed directly to trial. In the present case, the parents presented their own indictment on 25 February 1996.

2.7 The investigating judge questioned the policemen allegedly involved as well as witnesses and found no grounds for believing that the alleged criminal offence had been committed. The Criminal Bench of the Šabac District Court endorsed the investigating judge's decision. The Court did not find it necessary to hear the testimony of the two forensic experts and did not consider the possibility of ordering an exhumation and a new autopsy. Besides, the investigating judge delivered to the parents an unsigned statement which the pathologist allegedly made in court when they were not present and which contradicts the one he had made in writing on 18 July 1995. The author further explains that, in addition to the medical contradictions, there were many other conflicting facts that the judicial investigation failed to clarify.

2.8 The parents appealed the decision of the District Court to the Serbian Supreme Court, which on 29 October 1996 dismissed the appeal as unfounded. According to the ruling, the

testimony of Dragan Markovic showed without any doubt that Milan Ristic was alive at the time when police officers Sinisa Isailovic and Zoran Jeftic appeared in front of the building in which Mr. Markovic lived. They were responding to a telephone call from a person named Zoran Markovic who had noticed a man at the edge of the terrace from whose behaviour it could be concluded that he was about to commit suicide. Dragan Markovic and the two policemen actually saw Milan Ristic jump from the terrace. There was nothing they could do to stop him.

2.9 The parents again tried to bring the case before the judiciary, but on 10 February 1997 the Šabac District Court ruled that prosecution was no longer possible in view of the decision of the Supreme Court of Serbia. On 18 March 1997, the Supreme Court dismissed their further appeal and confirmed the District Court's ruling.

The complaint

3.1 The author considers that first the police and, subsequently, the judicial authorities failed to ensure a prompt and impartial investigation. All domestic remedies were exhausted without the court ever having ordered or formally instituted proper investigative proceedings. The preliminary investigation by the investigating judge, which consisted of questioning of the accused and some witnesses, did not produce sufficient information to clarify the circumstances of the death and the court never ordered a forensic examination. The court did not order either the hearing of other witnesses, such as the employees of the funeral home, whose testimony could have been relevant to establish the chronology of events. The author further contends that the investigation was not carried out in accordance with the provisions of the Criminal Procedure Code. For instance, the police failed to inform the investigating judge immediately of the incident, although obliged to do so by article 154. The entire on-site investigation was therefore conducted by the police without the presence of a judge. The author further contends that every action aimed at clarifying the incident was initiated by the parents of Milan Ristic and that the competent government bodies failed to take any effective steps to that end.

3.2 On the basis of the above, the author claims that the State party has violated several articles of the Convention, in particular articles 12, 13 and 14. He states that although the parents had the possibility of seeking compensation, the prospect of their being awarded damages was de facto non-existent in the absence of a criminal court judgement.

Observations by the State party

4. On 26 October 1998 the State party informed the Committee that, although all domestic remedies had been exhausted, the communication does not fulfil other necessary conditions provided for by the Convention. It stated, in particular, that no act of torture had been committed, since the deceased did not have any contact at all with State authorities - the police. Accordingly, the communication was not admissible.

The Committee's decision on admissibility

6. At its twenty-second session, in April-May 1999, the Committee considered the question of the admissibility of the communication and ascertained that the same matter had not been and was not being examined under another procedure of international investigation or settlement.

The Committee noted the State party's statement that all domestic remedies had been exhausted, and considered that the communication was not an abuse of the right of submission or incompatible with the provisions of the Convention. The Committee therefore decided, on 30 April 1999, that the communication was admissible.

The State party's observations on the merits

7.1 In a submission dated 15 December 1999, the State party gave to the Committee its observations on the merits of the communication.

7.2 The State party reiterates its opinion that the alleged victim was not subjected to torture because he had at no time been in contact with the law enforcement officers, i.e. the police officers. It therefore considers that there is no violation of the Convention whatsoever.

7.3 The State party also underlines that the courts of its country operate independently and have concluded rightfully and in accordance with the law that no investigation should be initiated against the alleged authors of the acts of torture. It points in this regard to the fact that the author of the communication has not submitted all the court decisions and other judicial documents that may bring some additional light to the Committee's consideration of the communication. The said documents were submitted to that effect by the State party.

7.4 The State party then gave its version of the facts. First, it alleges that the alleged victim took alcohol and drugs (Bromazepan) and had already tried to commit suicide some time before. During the afternoon preceding his death, on 12 February 1995, the alleged victim had taken some drugs (in the form of pills) and was in a very bad mood because of an argument he had had with his mother. These elements were, according to the State party, confirmed by four of his friends who spent the afternoon of 12 February 1995 with the alleged victim. The State party also notes that the parents and girlfriend of the alleged victim stated exactly the contrary.

7.5 With respect to the events surrounding the death of the alleged victim, the State party refers to the statement made by the eyewitness, Dragan Markovic, who explained that he had seen the victim standing on the edge of the terrace, 15 metres from the ground and immediately called the police. When the police arrived, the victim jumped from the terrace and neither Dragan Markovic nor the police could prevent it. The State party notes also that the three policemen who are accused of the alleged murder of the victim arrived on the premises after the victim had jumped and therefore concludes that none of them could have taken any action.

7.6 The above elements demonstrate, according to the State party, that the death of the alleged victim was the result of a suicide and that no acts of torture had therefore been committed.

7.7 Moreover, the State party notes that the impartiality of witness Dragan Markovic, as well as of S. Isailovic and Z. Jetvic, the two police officers who arrived first on the scene, is indisputable and confirmed by the fact that the request for an investigation filed by the author of the communication was directed not against these persons but others.

7.8 Concerning the judicial proceedings that followed the death of the victim, the State party recalls the various steps of the procedure and notes that the main reason that an investigation had not been ordered was the lack of strong evidence to prove a causal link between the behaviour of the three defendant police officers and the death of the victim. The State party contends that the procedure has been scrupulously respected at all steps and that the complaint has been carefully considered by all the magistrates who have had to deal with the case.

7.9 Finally, the State party emphasizes that certain omissions that may have occurred during the events immediately following the death of the alleged victim and that have been referred to by the author of the communication were not important because they do not prove that the alleged victim died as a result of torture.

Comments submitted by the author on the merits

8.1 In a submission dated 4 January 1999, the author refers to relevant jurisprudence of the European Court of Human Rights. In a further submission dated 19 April 2000, the author confirmed the assertions he had made in his communication and gave to the Committee additional observations on the merits of the communication.

8.2 The author first makes some remarks on specific issues raised or ignored by the State party in its observations. In this regard, the author mainly points to the fact that the State party limited itself to arguing that the three police officers allegedly responsible for the murder were not involved in the death of the alleged victim and fails to address the main issue of the communication which is the failure to carry out a prompt, impartial and comprehensive investigation.

8.3 The author focuses on the following factual elements supporting his claim:

(a) The inspector in charge of the case took three months to collect the information needed for the investigation;

(b) The District Court was only requested to initiate an investigation seven months after the death of the alleged victim;

(c) The District Court failed to take as a starting point for establishing the relevant facts the police report that had been made at the time of the death;

(d) The eyewitness Dragan Markovic did mention in his only statement the presence at the scene of police officers Z. Jeftic and S. Isailovic and not the presence of the three defendant police officers;

(e) The Šabac Police Department failed to provide the photographs taken at the scene of the incident, as a result of which the investigating judge transmitted incomplete documentation to the public prosecutor;

(f) When the parents of the alleged victim proceeded in the capacity of private prosecutor, the investigating judge failed to order the exhumation of the body of the alleged victim and a new autopsy, at the same time agreeing that the original autopsy "had not been performed in line with all the rules of forensic medicine";

(g) Yugoslav prosecuting authorities failed to hear numerous other witnesses proposed by the author.

8.4 Regarding the State party's contention that the alleged victim had previously attempted to commit suicide, the author indicates that the State party does not substantiate its claim with medical records or police reports, which are usually available in such cases. With regard to other rumours concerning the alleged victim, inter alia that he was addicted to drugs, the author notes that they have always been denied by the family. The author does not know when or whether the four friends of his son were interrogated and neither he nor his lawyer was ever notified of such an interrogation. Moreover, the author notes that three of these witnesses may have been subjected to pressure and influenced for various reasons.

8.5 Concerning the obligation to investigate incidents of torture and cruel, inhuman or degrading treatment or punishment, the author refers to the jurisprudence of the Committee in the case Encarnación Blanco Abad v. Spain (CAT/C/20/D/59/1996), where the Committee observed that "under article 12 of the Convention, the authorities have the obligation to proceed to an investigation ex officio, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed and whatever the origin of the suspicion". He also refers to the decision in the case Henri Unai Parot v. Spain (CAT/C/14/D/6/1990), according to which the obligation of a prompt and impartial investigation exists even when torture has merely been alleged by the victim, without the existence of a formal complaint. The same jurisprudence is confirmed by the European Court of Human Rights (Assenov and Others v. Bulgaria (90/1997/874/1086)).

8.6 Concerning the principle of prompt investigation of incidents of alleged torture or other ill-treatment, the author refers to the Committee's jurisprudence stating that a delay of 15 months before the initiation of an investigation is unreasonable and contrary to article 12 of the Convention (Qani Halimi-Nedzibi v. Austria, CAT/C/11/D/8/1991).

8.7 Concerning the principle of the impartiality of the judicial authorities, the author states that a body cannot be impartial if it is not sufficiently independent. He refers to the case-law of the European Court of Human Rights to define both the impartiality and the independence of a judicial body in accordance with article 6 (1) and 13 of the European Convention on Human Rights and underlines that the authority capable of providing a remedy should be "sufficiently independent" from the alleged responsible author of the violation.

8.8 Concerning the existence of reasonable grounds to believe that an act of torture or other ill-treatment has been committed, the author, again relying on the jurisprudence of the European Court of Human Rights, points to "the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence".

8.9 Concerning the principle of compensation and rehabilitation for an act of torture or other ill-treatment, the author mentions that an effective remedy entails also the payment of compensation.

8.10 The author stresses that, at the time of his submission, five years had already elapsed since his son's death. He contends that, notwithstanding strong indication that grave police brutality had caused the death of Milan Ristic, the Yugoslav authorities have failed to conduct a prompt, impartial and comprehensive investigation able to lead to the identification and punishment of those responsible, and have thus failed to provide the author with any redress.

8.11 Relying on a significant amount of sources, the author explains that police brutality in Yugoslavia is systematic and considers that public prosecutors are not independent and rarely institute criminal proceedings against police officers accused of violence and/or misconduct towards citizens. In such cases, the action is very often limited to a request for information directed to the police authorities alone and the use of dilatory tactics is common.

8.12 Finally, the author specifically refers to the most recent examination of the periodic report submitted by Yugoslavia to the Committee and the latter's subsequent concluding observations, in which it stated that it was "extremely concerned over the numerous accounts of the use of torture by the State police forces that it has received from non-governmental organizations" (A/54/44, para. 46) and "gravely concerned over the lack of sufficient investigation, prosecution and punishment by the competent authorities ... of suspected torturers or those breaching article 16 of the Convention, as well as with the insufficient reaction to the complaints of such abused persons, resulting in the de facto impunity of the perpetrators of acts of torture" (ibid., para. 47).

Issues and proceedings before the Committee

9.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention. It regrets in this regard that the State party has only provided the Committee with a different account of the event, and notes that more precise information concerning the conduct of the investigation was necessary, including an explanation of why a new autopsy was not carried out.

9.2 It also notes that the author of the communication claims that the State party has violated articles 2, 12, 13, 14 and 16 of the Convention.

9.3 With regard to articles 2 and 16, the Committee first considers that it does not fall under its mandate to assess the guilt of persons who have allegedly committed acts of torture or police brutality. Its competence is limited to considering whether the State party has failed to comply with any of the provisions of the Convention. In the present case, the Committee will therefore not pronounce itself on the existence of torture or ill-treatment.

9.4 With regard to articles 12 and 13 of the Convention, the Committee notes the following elements, on which both parties have been able to submit observations:

(a) There are apparent differences and inconsistencies between the statement made on 18 August 1995 by the doctor who came with the ambulance as to the premise of the cause of death of the alleged victim, the autopsy report of 13 February 1995 and the report made on 20 March 1995 by two forensic experts at the request of the parents of the alleged victim;

(b) Although the investigating judge in charge of the case when the parents of the alleged victim proceeded in the capacity of private prosecutor stated that the autopsy "had not been performed in line with all the rules of forensic medicine", there was no order of exhumation of the body for a new forensic examination;

(c) There is a difference between the statement made on 13 February 1995 by one of the three police officers allegedly responsible for the death of the alleged victim according to which the Police Department had been called for a person who *had committed* suicide and the statements made by another of the above-mentioned police officers, as well as by two other police officers and the witness D. Markovic, according to which the Police Department had been called for a person who *might jump* from the roof of a building;

(d) The police did not immediately inform the investigating judge on duty of the incident in order for him to oversee the on-site investigation in compliance with article 154 of the Code of Criminal Procedure of the State party.

9.5 Moreover, the Committee is especially concerned by the fact that the doctor who carried out the autopsy admitted in a statement dated 18 July 1995 that he was not a specialist in forensic medicine.

9.6 Noting the above elements, the Committee considers that the investigation that was conducted by the State party's authorities was neither effective nor thorough. A proper investigation would indeed have entailed an exhumation and a new autopsy, which would in turn have allowed the cause of death to be medically established with a satisfactory degree of certainty.

9.7 Moreover, the Committee notes that six years have elapsed since the incident took place. The State party has had ample time to conduct a proper investigation.

9.8 In the circumstances, the Committee finds that the State party has violated its obligations under articles 12 and 13 of the Convention to investigate promptly and effectively allegations of torture or severe police brutality.

9.9 With regard to allegations of a violation of article 14, the Committee finds that in the absence of proper criminal investigation, it is not possible to determine whether the rights to compensation of the alleged victim or his family have been violated. Such an assessment can only be made after the conclusion of proper investigations. The Committee therefore urges the State party to carry out such investigations without delay.

10. In pursuance of rule 111, paragraph 5, of its rules of procedure, the Committee urges the State party to provide the author of the communication with an appropriate remedy, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the observations made above.

Communication No. 122/1998

Submitted by:	M.R.P. (name deleted) [represented by counsel]
Alleged victim:	The author
State party:	Switzerland
Date of communication:	7 October 1998

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 November 2000,

Having concluded its consideration of communication No. 122/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available by the author of the communication and the State party,

Adopts the following decision:

1.1 The author of the communication is Mr. M.R.P., a citizen of Bangladesh born in 1969 and currently residing in Switzerland, where he applied for asylum on 29 August 1997. His application having been turned down, he maintains that his forcible repatriation to Bangladesh would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 27 November 1998. At the same time, the State party was requested, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, not to expel the author to Bangladesh while his communication was under consideration by the Committee. In a submission dated 22 January 1999, the State party informed the Committee that steps had been taken to ensure that the author was not returned to Bangladesh while his case was pending before the Committee.

The facts as submitted by the author

2.1 The author claims to be a member of the Bangladesh National Party (BNP), the main opposition political party. He was president of the BNP Union from 1994 to 1997 and vice-president of a regional BNP youth organization (the Yuba Dubal) as of 1997.

2.2 On 13 January 1997, the author and his brother were apparently attacked by members of the Awami League (AL), the political party in power. The author managed to flee, but his

brother was seriously injured. A complaint was lodged with the police. The police arrested one of the suspected attackers, but quickly released him without charge. Members of the arrested person's family also exerted pressure on the author, who in the end withdrew his complaint.

2.3 After that incident, the author was forced to leave his home during the day. In the night of 13-14 June 1997, an AL member who was a driver for one of the organization's leaders, Mr. Shafijrahman, was killed. The attack's intended victim was apparently Mr. Shafijrahman himself, who was prompted to lodge a complaint against the author and four other BNP sympathizers. In that regard, the author points out that, in Bangladesh, it is common practice for BNP members to have complaints lodged against them and to be charged on non-existent grounds; this, in fact, constituted an abuse of power by AL members to intimidate and eliminate political opponents. After the complaint was lodged, the author decided to leave his country immediately.

2.4 The author arrived in Switzerland on 26 August 1997 and applied for asylum on 29 August 1997. His application was turned down on 7 January 1998, essentially on the grounds that the attack against him and his brother had not been carried out by the State. The author appealed the ruling to the Swiss appeals court dealing with asylum matters. The appeal was rejected on 15 April 1998.

Merits of the complaint

3.1 The author states that Bangladesh is a country with gross, flagrant and mass human rights violations, within the meaning of article 3, paragraph 2, of the Convention. Given that a complaint had been lodged against him, there is serious reason to believe that he risks being subjected to torture should he be returned to Bangladesh. Torture and ill-treatment are commonplace in Bangladesh, the prisons are overcrowded and prison sanitary conditions are inhuman. The author claims that, in December 1997 alone, at least four people were killed while remanded in custody.

3.2 The author also recalls that the vice-president of Yuba Dubal had been the target of intimidation on the part of Awami League members more than once. He considers that the charge of murder against him is part and parcel of the climate of oppression prevailing in his country and that the aim is to eliminate him personally as an opponent. He also considers that, if he had been arrested, he would probably be in prison and the victim of abusive treatment and torture. Since the judiciary is controlled by those in power, it is unlikely he would be acquitted and he therefore ran the risk of life imprisonment or the death penalty.

Observations by the State party on the admissibility and merits of the communication

4.1 The State party did not contest the admissibility of the communication and, in a letter dated 18 June 1999, made observations on its merits.

4.2 The State party points out that there remains some doubt as to the author's true identity. Those doubts stem not only from the fact that the author's name is spelled in two different ways in the translation of the documents he produced, but also from the absence of the certificate that the author undertook to provide. It is therefore difficult to be certain that the documents submitted to the Swiss authorities refer to the author.

4.3 The State party also wishes to inform the Committee about the contradictions observed in the course of the two hearings during the asylum procedure. At the first hearing, the author stated that the person who had been killed was called Babu, but, at another hearing, he said that the person was called Abul Kalama and that he knew of no other name for that person. The State party nevertheless emphasizes that that contradiction alone is not a sufficient basis for concluding that the communication is unfounded.

4.4 The State party considers, contrary to the author, that the Bangladeshi police took a number of measures to prosecute the perpetrators of the attack on the author and his brother. In addition, the author and his brother could have taken the matter to a higher court. Lastly, the State party points out that, after the incident, the author continued to live at home, which would seem to prove that he no longer stood in great fear of his political enemies.

4.5 Although it acknowledges the existence in Bangladesh of politically motivated complaints (i.e. complaints that are not based on facts, but whose sole aim is to cause trouble for a political adversary), the State party underlines that the administrative inquiries that follow on the complaints are legitimate and therefore in no way reflect political motivation on the part of the State. The State party also points out that the Special Powers Act, which allows for unlimited detention without trial, is not applicable in the author's case and that there is therefore little likelihood that the author will be imprisoned for an indefinite time.

4.6 With regard to the author's allegations that the courts and tribunals of Bangladesh are corrupt and controlled by the Government, the State party considers that, while that may be the case for lower courts, higher courts are independent and impartial. There is therefore no evidence that the author would not be granted the benefit of an impartial and fair trial.

4.7 According to the State party, neither the risk of being tried by a Bangladeshi court nor the fact that he might be imprisoned, and could therefore be subject to ill-treatment, are reasons to prevent the author's expulsion on the basis of article 3 of the Convention.

Author's comments

5.1 The author comments on the State party's observations on the merits of the communication in a letter dated 10 August 1999.

5.2 The author points out that the State party recognizes that, in Bangladesh, extremists from certain parties lodge complaints against opponents for purely political reasons and that certain lower courts are corrupt and not independent. The State party therefore does not dispute the fact that the author would probably be imprisoned on arrival in Bangladesh, that he risks being

ill-treated and tortured while being held, that he would probably be convicted by a lower court and that he would have to wait for a higher court to consider his case to obtain what might be a fair trial.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It has ascertained, as it is required to do in accordance with article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It also notes that all domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. It therefore considers that the communication is admissible. As both the State party and the author have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Bangladesh would violate the obligation of the State party under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Bangladesh. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to the country. There must be other grounds indicating that the individual concerned would be personally at risk. However, the absence of a consistent pattern of gross violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, which reads:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.5 The Committee notes the arguments advanced by the author and by the State party regarding the alleged risk of the author's being tortured and considers that the latter has not produced enough evidence to show that he would run a personal real and foreseeable risk of being tortured in Bangladesh.

6.6 The Committee therefore finds that the information submitted to it does not demonstrate that there are substantial grounds for believing that the author would be in danger of being personally tortured if returned to Bangladesh.

6.7 Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the author to Bangladesh does not constitute a breach of article 3 of the Convention.

Communication No. 123/1998

Submitted by : Z.Z. (name withheld)
[represented by counsel]

Alleged victim: The author

State party: Canada

Date of communication: 11 November 1998

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 2001,

Having concluded its consideration of communication No. 123/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The author of the communication, dated 11 November 1998, is Mr. Z.Z., a citizen of Afghanistan, born on 8 July 1948. He was deported to Afghanistan on 27 November 1998, following a conviction for drug offences in Canada. He claims that his deportation to Afghanistan constitutes a violation by Canada of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 11 December 1998 and requested the latter to provide observations on the admissibility and merits of the communication.

The facts as presented by the author

2.1 The author allegedly fled Afghanistan in 1977 at the time of the armed intervention of the Soviet Union in the Afghan conflict. His brother was killed by Soviet forces and he feared the same fate. He went to Iran where he remained for two years without legal status. He then travelled to Pakistan where he also remained two years without a legal status. From Pakistan, the author decided to enter India where he requested to be recognized as a refugee by UNHCR. He was allegedly recognized as a Convention refugee but did not keep any evidence of it. However, having no work permit and no right to education, the author decided to join his brother who had been recognized as a refugee in Canada.

2.2 The author arrived in Canada in 1987 on a false passport. Upon his arrival in Montreal, he applied for asylum. He was found to have a credible basis for his refugee claim, which entitled him to apply for permanent residence, and he became a permanent resident in 1992.

2.3 On 29 June 1995, the author, found guilty of importing narcotics, was sentenced to 10 years' imprisonment. On 10 April 1996, the Minister of Citizenship and Immigration declared him a "danger to the public in Canada" and decided that he should therefore be removed to his country of origin. The Minister argued that the serious criminal offence of which he had been convicted and the need to protect Canadian society outweighed any humanitarian and compassionate considerations. The author applied for review of this decision before the Federal Court but his application was denied.

2.4 On 4 November 1998, the author attended a detention review hearing during which he was told that his detention would continue and that his removal would take place on 14 November 1998. The same day, counsel for the author faxed a request to the Removal Officer to defer the deportation until a proper risk assessment had been made, referring to recent documentation about the situation in Afghanistan.

2.5 The request being denied, the author sought a stay of the expulsion order in the Federal Court Trial Division, arguing that because of his ethnic background, he would be subjected to torture if removed to Afghanistan. On 12 November 1998, the Court refused the stay. Finally, on 13 November 1998, the author applied for an interim injunction before the Ontario Court of Justice to stay the execution of the deportation order. The application was dismissed because the matter had already been decided by the Federal Court.

2.6 In his submission to the Committee dated 11 November 1998, the author argued, in relation to the issue of exhaustion of internal remedies, that as soon as the Court rendered its decision on the application for the stay of removal, there would be no other internal remedy left.

2.7 The author alleges that the State party did not make a proper risk assessment at the time of the decision in April 1996 nor any subsequent review of the risk assessment, despite the existence of major political and human rights problems in the country to which the author was to be deported. The Taliban had become a major actor in the Afghan political situation and conditions in the country had changed dramatically as a consequence.

2.8 The author is a Sunni Muslim and a member of the Tajik ethnic group. The bigger part of Afghanistan is at present controlled by the Taliban who, although Sunnis, are of a different ethnic group, the Pashtun.

2.9 The author states that Afghanistan continues to experience civil war and political instability and that ethnic divisions are increasingly influencing the fighting. The Taliban, who emerged as a military and political force in 1994, are an ultra-conservative Islamic movement. In January 1997, they were controlling two thirds of Afghanistan including Kabul, the capital.

2.10 In addition to the general situation of insecurity caused by the internal armed conflict between the Taliban and other factions, the human rights situation in the territory controlled by the Taliban is of serious concern. According to the author, there is discrimination between the

different ethnic groups. The Taliban have detained hundreds of people solely because of their ethnic origin. Among these minority groups are the Uzbeks, Tajiks, Hazaras, Shi'ite Muslims and Turkmen. The author submits that a significant number of Tajiks have been detained and some of them have disappeared.

2.11 The author also refers to Amnesty International reports stating that Taliban guards have beaten and kicked people in custody and that long-term prisoners have been severely tortured. It is also submitted that according to a Human Rights Watch report on one of the worst massacres of civilians committed by the Taliban, in August 1998 when they took Mazar-el-Sharif, the author's city of origin, in the days after the incident the Taliban searched and arrested all males of Hazara, Uzbek and Tajik origin in the city. Moreover, since the city jail was overcrowded, thousands of the detainees were transferred to other cities in large container trucks holding 100-150 persons. In two known instances, nearly all the men in the container were asphyxiated or died of heat stroke.

The complaint

3.1 At the time of the submission of his communication, the author alleged that he would be at serious risk of torture if he were removed to Afghanistan, and that the decision to forcibly remove him to Afghanistan would entail a violation of article 3 of the Convention. It is also submitted that no competent official of the State party has properly assessed whether there was a risk of torture. As a result, there has been both a substantive and a procedural violation of the Convention.

3.2 The author recalls that the specific prohibition on removing persons to where they may be at risk of torture is explicitly enshrined in article 3 of the Convention against Torture. In determining whether article 3 should apply, the Committee should base itself on whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the country concerned and whether the author runs a personal risk, which may emanate from his/her class or character.[1]

State party's observations on the admissibility and merits

4.1 In a submission dated 14 December 1999, the State party transmitted to the Committee its observations on both the admissibility and merits of the case.

On the admissibility

4.2 The State party submits that the communication was inadmissible as the author had not exhausted the internal remedies as required by article 22 (5) (b) of the Convention and rule 91 of the Committee's rules of procedure. It underlines that it is a fundamental principle of international law that local remedies must be exhausted before a remedy is sought from an international body. This principle gives the State an opportunity to correct internally any wrong that may have been committed before the State's international responsibility is engaged.

4.3 Under the Immigration Act, judicial review of decisions are available before the Federal Court Trial Division, and it is submitted that an applicant does only need a "fairly arguable case" or "a serious question to be determined" for leave to be granted.

4.4 The State party argues that the Committee, as well as other international tribunals, consider judicial review as an available and effective remedy. In the case M.A. v. Canada (CAT/C/14/D/22/1995), the author was granted refugee status but later declared a threat to Canadian security so that he had to be removed from Canada. The communication was declared inadmissible because the author was in the process of challenging the removal decision by way of judicial review. The European Court of Human Rights has a similar jurisprudence[2] and considers that judicial review provides a sufficiently effective remedy in asylum cases.

4.5 In the present case, the author's application to the Federal Court Trial Division for leave for judicial review of the Minister's opinion that the author constituted a danger to the public was denied on 8 September 1997. On 5 November 1998, the author applied to the Federal Court Trial Division against the decision of the Removal Officer not to defer deportation. He subsequently submitted the present communication to the Committee on 11 November 1998 before the Federal Court could examine his application.

4.6 Moreover, the author failed to perfect the application for judicial review by filing an Application Record within the prescribed period. In this regard, the State party again refers to the jurisprudence of the European Court of Human Rights according to which complainants have to respect and follow domestic procedures also with respect to time limits before bringing an international claim.[3]

4.7 The State party argues that the Federal Court could have examined the case if the application of 5 November 1998 had been perfected and leave had been granted, which could have led to a reconsideration of the case.

4.8 The author also brought an action in the Federal Court Trial Division challenging the constitutionality of the provision denying him the opportunity to claim refugee protection. He also argued that the Immigration Act and the immigration process are contrary to the Canadian Charter of Rights and Freedom because neither requires a risk assessment. The author, however, did not continue this action, which was, at the time of the submission, still pending. He could indeed have instructed his lawyer to proceed on his behalf. The State party argues in this connection that the author's deportation does not render his rights or pending actions ineffective or moot.

4.9 The State party also submits that the author could have sought a humanitarian and compassionate assessment of his case. It refers to X v. Sweden where the Committee found that such an application was an effective remedy since the Appeals Board in that case had the competence to grant the authors a residence permit.[4] This option was available to the author prior to the deportation and there was no time limit for submitting it.

4.10 The State party deems that the above-mentioned remedies are effective in the sense of article 22 (5) of the Convention. The author should therefore have pursued them prior to petitioning the Committee and has failed to exercise due diligence in not doing so.

On the merits

4.11 As for the risk faced by the author, the State party refers to the principle, laid down by the Committee in the case Seid Mortesa Aemei v. Switzerland,[5] that it has to determine "whether there are substantial grounds for believing that [the author] would be in danger of being subjected to torture [in the country to which he is being returned]" and "whether he would be personally at risk". The State party also recalls that the burden of proof is on the author to establish that there are substantial grounds to believe that he or she would be personally at risk of being subjected to torture.

4.12 The State party submits that since the protection provided by article 3 is, according to the Committee's jurisprudence, absolute, irrespective of the author's past conduct, the determination of risk must be particularly rigorous. To that purpose, it refers to a decision of the European Court of Human Rights where it is stated with regard to article 3 of the European Convention on Human Rights that "the Court's examination of the existence of a risk of ill-treatment in breach of Article 3 at the relevant time must necessarily be a rigorous one in view of the absolute character of this provision".[6]

4.13 In order to assess the risk of torture faced by the author, the State party contends that the following factors are pertinent: (a) whether the State concerned is one in which there is evidence of a consistent pattern of gross, flagrant or mass violation of human rights; (b) whether the author has been tortured or maltreated by or with the acquiescence of a public official in the past; (c) whether the situation referred to in (a) has changed; and (d) whether the author has engaged in political or other activity within or outside the State concerned which would appear to make him particularly vulnerable to the risk of being tortured.

4.14 Contrary to the author's allegations, the State party emphasizes that the risks faced by the author upon his return to Afghanistan were assessed by the Minister of Citizenship and Immigration in April 1996 when considering whether the author was a danger to the public. The jurisprudence cited by the author to support his argument[7] has not always been followed and is now under appeal before the Federal Court of Appeal. Moreover, the State party submits that it is not for the Committee to question its internal procedures on risk assessment. Finally, such a risk assessment was also evaluated by the Federal Court Trial Division on the request to stay the deportation.

4.15 The State party considers that the author has not demonstrated, on a prima facie basis, that he is personally at risk of torture because of his ethnic origin. Although it is not denied that there are violations of human rights perpetrated by the Taliban, there is no indication that the Tajiks are specifically targeted. The State party refers to information from the Research Directorate of the Canadian Immigration and Refugee Board stating that persecution is rather aimed at the Shia Hazar people and the Turkish-speaking supporters of General Dostam. The same source of information underlines that, "generally, people who are suspected of supporting ... the Northern Alliance would be under tight surveillance from the Taliban security forces. Ethnic affiliation is not a primary reason for being targeted by the Taliban ...; however, Tajiks living under the Taliban rules are careful and venture in the streets of Kabul with caution". Moreover, the report indicates that Tajiks can freely and safely live in the north of Afghanistan while the ones living on the territory controlled by the Taliban are not

systematically targeted for surveillance. There is also no evidence that torture is routinely practised by the Taliban against the Tajiks, the author himself acknowledges in his communication that "torture does not appear to be a routine practice in all cases".

4.16 The State party further argues that the author did not bring any evidence that he would be personally at risk of torture in Afghanistan. There is no evidence that the author was ever arrested and the reasons for which he left his country in 1977 no longer exist. Neither has the author stated that persons in his entourage were persecuted or tortured because they were Tajiks, nor has the author been engaged in a political activity that could draw the Taliban's attention. The facts alleged therefore do not reveal a prima facie case that his expulsion would expose him to the risk of torture.

4.17 The State party submits that the present communication is based on exactly the same facts as those presented to the Minister of Citizenship and Immigration when he made his "danger opinion" and those presented on judicial review before the Federal Court Trial Division. As a consequence, since the national proceedings did not disclose any manifest error or unreasonableness and were not tainted by abuse of process, bad faith, manifest bias or serious irregularities, the Committee should not substitute its own findings on whether the author risks being subjected to torture in Afghanistan; it should not become a "fourth instance" that would re-examine the findings of facts by the internal authorities.

4.18 As a consequence, the State party is of the view that, on the basis of the criteria referred to in paragraph 4.13 above, there is no indication: (a) that the author was tortured or maltreated by or with the acquiescence of a public official in Afghanistan in the past; (b) that he is currently being sought by Afghan authorities; (c) that persons in his immediate circle were arrested or tortured because they are Tajiks; (d) that ethnic Tajiks are specifically targeted for mistreatment; and (e) that he has been involved in any high-profile activity that could draw the attention of the Taliban.

4.19 The State party therefore requests that, if the communication is declared admissible, it is declared without merits.

Counsel comments

On the admissibility

5.1 In a submission of 21 January 2000, counsel for the author made her comments on the observations of the State party. In connection with the exhaustion of internal remedies, counsel recalls that the author was granted permanent residence in 1992 and that he was later convicted of a criminal offence leading to the deportation order issued against him. Under the Immigration Act, a person can be deported from Canada and denied access to the refugee procedure if the Minister certifies the person as a "danger to the public in Canada". In this case, the only issue is whether or not the person is a danger to the public in Canada, not whether the person is at risk. As a result, when such a decision is taken, the person no longer has a right to appeal to the Appeal Division and is also denied a right to make a refugee claim.

5.2 Counsel reiterates that the procedure for certifying that a person is a danger to the public in Canada is not an adequate assessment of risk. She considers that the position of the State party has consistently been that, in certain circumstances, persons who constitute a danger to the public can be deported to their countries of origin even when there is a risk of torture. This was also the substance of the ruling of the Court of Appeals in the case Suresh v. M.C.I. (Minister of Citizenship and Immigration). The interpretation of the Federal Court of Appeal is that the Convention does not prohibit in all cases deportation to countries where there is a significant risk of torture. It is therefore counsel's contention that the official position of the State party, as substantiated by the second highest court in Canada, is that persons can be deported to countries where there would be a substantial risk of torture if there is a compelling State interest. Counsel submits that the Committee must act urgently to make its view clear to the State party that removal to countries where there is a risk of torture is not permitted under any circumstances.

5.3 Counsel argues that, as a result of the deportation and the fact that she is unable to receive instructions from the author, the obligation to challenge the decision to execute deportation by internal remedies has become moot. The same may be said for the questioning of the constitutionality of the provision denying the author the opportunity to claim refugee protection. As a consequence, once the author was unable to obtain a stay of the deportation and was indeed deported, all domestic remedies had been exhausted because the deportation order was executed. To perfect applications challenging a decision to execute a decision of removal under these circumstances would, according to counsel, be meaningless.

On the merits

5.4 With respect to the merits, it is the counsel's opinion that no person has adequately and properly assessed the risk run by the author. To allow any assessment of risk to be made within the context of a determination as to whether a person is a danger to the public to permit his deportation is, according to counsel, unsatisfactory. The risk assessment has to be conducted independently of any evaluation of danger. Counsel submits that the Committee should know whether or not the State party concluded that the author was at risk. This is particularly important in light of the position of the State party that deportation to countries where a person risks torture is possible under certain circumstances.

5.5 Moreover, counsel is of the opinion that the assessment of risk made by the State party after the removal of the author is not satisfactory. The assessment should have taken place prior to the removal.

5.6 As for the current situation of the author, counsel acknowledges that she has been unable to communicate with him. Counsel argues, however, that the State party has not made any effort to verify the author's current situation and determine whether he is safe and at risk of being subjected to torture.

Additional comments by State party

6.1 In a submission of 10 May 2000, the State party argued with regard to the admissibility of the case that a positive determination on the application on humanitarian and compassionate grounds could have enabled the author to remain in Canada. Furthermore, the State party reiterates its arguments that the removal of the author did not render his rights or pending actions ineffective or moot.

6.2 With regard to the merits of the case, the State party submits that, in its consideration as to whether the author constituted a danger to the public in Canada, the Minister did assess the risk faced by the author in case of return to Afghanistan. Such assessment was also done by the Federal Court Trial Division in its 12 November 1998 decision.

6.3 The State party finally reiterates its concern that the Committee should not become a fourth instance by re-evaluating findings of domestic courts unless there was a manifest error or if the decision was tainted by abuse of power, bad faith, manifest bias or serious irregularities.

Additional comments by counsel on behalf of the author

7.1 In a submission of 7 June 2000, counsel underlined that the application on humanitarian and compassionate grounds is not an effective remedy because it does not stay the removal; in any event it was useless to pursue an application challenging a decision of removal after the deportation had been executed.

7.2 Counsel also repeated that the "danger opinion" is not a risk assessment and that the decision of the Federal Court was based on misconstructions of evidence, and the judge had no expertise in assessing risk.

Issues and proceedings before the Committee

8.1 Before considering any claims contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 With regard to the exhaustion of domestic remedies, the Committee has taken note of the observations by the State party and by the author's counsel. Pursuant to article 22, paragraph 5 (b), of the Convention, the Committee is precluded from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted. This rule does not, however, apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the presumed victim. In this connection, the Committee notes that the author was removed to Afghanistan on 27 November 1998. The Committee therefore declares the communication admissible.

8.3 The Committee notes that both the State party and the author's counsel have provided observations on the merits of the communication. It therefore decides to consider the merits at the present stage.

8.4 The Committee is of the opinion that the author did not bring any evidence that he would be personally at risk of being subjected to torture if he were returned to Afghanistan. The Committee also noted that the author has not suggested that he had been subjected to torture in the past. Nor has he alleged that he has been involved in any political or religious activities such that his return could draw the attention of the Taliban to the extent of putting him at personal risk of torture.

8.5 The author only brought information on the general situation in Afghanistan and claimed that, as a member of the Tajik ethnic group, he would face torture upon return to Afghanistan. Although it recognizes the difficulties encountered by some ethnic groups in Afghanistan, the Committee considers that the mere claim of being a member of the Tajik ethnic group does not sufficiently substantiate the risk that the author would be subjected to torture upon return.

9. As a consequence, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as presented by the author and as found by the Committee do not reveal a breach of article 3 of the Convention.

Notes

[1] Khan v. Canada, communication No. 15/1994, (CAT/C/13/D/15/1994); Mutombo v. Switzerland, communication No. 13/1993 (CAT/C/12/D/13/1993).

[2] See Vilvarajah and Others v. United Kingdom, 14 E.H.R.R. 218 (30 October 1991).

[3] See Bahaddar v. The Netherlands, No. 145/1996/764/965 (19 February 1998).

[4] X v. Sweden, communication No. 64/1997 (19 November 1997).

[5] Views, communication No. 34/1995, CAT/C/18/D/34/1995, 9 May 1997.

[6] Supra, note 3.

[7] Saini v. Canada (Minister of Citizenship and Immigration) [1998] 3 F.C. 315 (T.D.); Farhadi v. Canada (Minister of Citizenship and Immigration) [1998] 4 F.C. 325 (T.D.)

Communication No. 128/1999

Submitted by:	X.Y. (name deleted) [represented by counsel]
Alleged victim:	The author
State party:	Switzerland
Date of the communication:	2 March 1999

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 2001,

Having concluded its consideration of communication No. 128/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available by the author of the communication and the State party,

Adopts the following decision:

1.1 The author of the communication, Mr. X.Y., born on 20 March 1960, is a Syrian national of Kurdish origin. He currently resides in Switzerland, where he applied for political asylum. His application was rejected, and he maintains that his forcible repatriation to the Syrian Arab Republic would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He has asked the Committee to take emergency measures, since at the time he submitted his communication he was liable to imminent expulsion. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 12 March 1999. At the same time the State party was requested, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, not to expel the author to the Syrian Arab Republic while his communication was under consideration by the Committee. In a submission dated 12 May 1999 the State party informed the Committee that steps had been taken to ensure that the author was not returned to the Syrian Arab Republic while his case was pending before the Committee.

The facts as submitted by the author

2.1 The author claims that he has been a member of the Kurdistan Democratic Party in Iraq (KDP-Iraq)[1] since 1980. As such, he allegedly participated in various activities of that organization, chiefly by transporting funds to support Kurds in Iraq and by distributing pamphlets deploring the situation of the Syrian Kurds, who had been stripped of their nationality by the Syrian State.

2.2 The author claims that he was twice arrested by the Syrian security forces. The first time, during the Iraqi invasion of Kuwait, he was in possession of funds intended for Iraq. He was freed after 18 days, only after a large sum of money had been paid by his family for his release. The second arrest reportedly took place in 1993. On that occasion, the author was held for 96 days in Mezze prison near Damascus and was reportedly tortured. He was released only after swearing to forgo any political activities in the future. His family again paid approximately 6,000 United States dollars to secure his release.

2.3 Subsequently, however, the author continued his political activities. In March 1995 he was warned by a family member who had reportedly received information from the security services that he was going to be arrested once again. The author then decided to flee the country and crossed the border into Lebanon illegally. He left Lebanon by boat in March, but it is not clear when he arrived in Europe. Nevertheless, on 10 April 1995 he applied for political asylum in Switzerland, largely on the basis of his alleged persecution in the Syrian Arab Republic.

2.4 The author's request for asylum was turned down on 28 May 1996 by the Federal Office for Refugees as being implausible, and 15 August 1996 was set as the deadline for the author's departure from Swiss territory. Subsequently the author appealed against that decision to the Swiss Appeal Commission on Asylum Matters, supporting his appeal with a medical report certifying that he might have been tortured in the past. The Appeal Commission dismissed the appeal on 8 July 1996, declaring it inadmissible on the grounds that the deadline for submission of an appeal had not been met.

2.5 On 8 August 1996 the author submitted a request for reconsideration of his case (an extraordinary recourse allowing for review of decisions that had already been executed) by the Federal Office for Refugees. The applicant specifically requested that it should be noted that execution of his expulsion from Switzerland constituted a violation of the principle of non-refoulement set out in the Convention on the Status of Refugees (art. 33), the prohibition of torture contained in article 3 of the European Convention on Human Rights and articles 2 and 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Federal Office for Refugees rejected the request for reconsideration on 9 August 1996, maintaining that the applicant had not presented any new facts or evidence but was merely seeking to have the facts set out in his initial appeal considered in a different light. (The Federal Office for Refugees also ordered the immediate execution of the applicant's expulsion from Switzerland, on the grounds that it was not contrary to Switzerland's legislative or treaty obligations.)

2.6 On 8 September 1996 the author appealed against the decision of the Federal Office for Refugees. In the light of the new appeal, in which the author sought to prove that execution of

his expulsion was wrongful under the Convention relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Swiss Appeal Commission on Asylum Matters suspended execution of the expulsion and authorized the author to remain in Switzerland pending the outcome of his appeal. The Federal Office for Refugees was consulted in the context of that appeal, and on 29 April 1997 it upheld its position that the applicant's expulsion to the Syrian Arab Republic would place him in physical danger. As part of the same appeal, the author's counsel maintained his conclusions on 20 May 1997.

2.7 The appeal was considered on the merits and rejected by a decision of the Appeals Commission dated 18 June 1998; the Commission held that the applicant had not provided grounds for reconsideration of his case and that he faced no real risk of torture should he be sent back to the Syrian Arab Republic. Following that decision the author was invited to leave Swiss territory by 15 February 1999.

Merits of the complaint

3. The author bases his complaint on the allegation that if he is sent back to the Syrian Arab Republic by Switzerland he risks being subjected to cruel, inhuman and degrading treatment; specifically, he risks being tortured by the authorities. He also believes that, if sent back, he would risk torture because he left the Syrian Arab Republic illegally. In the author's view, it is clear that a consistent pattern of gross, flagrant and massive violations of human rights exists in that country which, under article 3, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, constitute circumstances that a State party must take into account when deciding to expel someone. Consequently, the author believes that Switzerland should not expel him, or else risk violating the Convention.

Observations by the State party on admissibility

4.1 In its note dated 12 May 1999, the State party describes the various stages of the process followed by the author in seeking asylum. It specifically faults the author for not meeting the deadlines for appealing against the decision by the Federal Office for Refugees not to grant political asylum. The State party claims that failure to meet the deadline for filing an appeal made it necessary for the Swiss Appeal Commission on Asylum Matters to conduct an extraordinary review of the case, based solely on the existing case file, in order to determine whether the applicant faced an obvious risk of persecution or treatment that violated human rights in his country of origin. That review, according to the State party, was narrower in scope than the review that the Appeal Commission would have conducted had the appeal been filed through regular channels. Nevertheless, the State party declares that it does not contest the admissibility of the communication.

The author's comments on the State party's observations on admissibility

5.1 The author addresses his comments to the observations made by the State party on 28 June 1999. He acknowledges that the review process focused exclusively on whether Switzerland had complied with its international obligations and not on Swiss legislation governing asylum. The author refers to the jurisprudence of the Swiss Appeal Commission on

Asylum Matters (JICRA 1995, No. 5), which states that "an applicant for asylum had the right, independently of formal questions of deadlines, to have the question of whether his or her expulsion was executed in accordance with the principle of non-refoulement (article 33 of the Convention relating to the Status of Refugees) or the prohibition of torture and other inhuman treatment (article 3 of the European Convention on Human Rights or article 3 of the Convention against Torture) considered at any time. These principles are in fact held to be absolute, and the expiry of a procedural deadline cannot be used to justify their violation".

5.2 Accordingly, the author declares that the decision issued by the Swiss Appeal Commission on Asylum Matters on 18 January 1999, from the standpoint of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concerned the question of the risk of torture he faced if he was sent back to the Syrian Arab Republic. This proves, in the author's view, that the question on which the Committee was being asked to rule had already been considered by the competent national authority.

Observations by the State party on the merits

6.1 The State party transmitted its remarks on the merits of the communication on 13 September 1999. It reviewed the procedure followed in the case and stated that with regard to the final decision - that taken by the Appeal Commission on 18 January 1999 - the Appeal Commission had conducted a review that was narrower in scope than would have been the case had the author followed the ordinary appeal procedures.

6.2 The State party contends that the communication contains no new information beyond that considered when the case was dealt with through national procedures.

6.3 Secondly, the State party points out that the author had not provided any evidence to support several of his allegations, particularly with regard to the statement that he had been detained in a prison in Damascus for 96 hours for having criticized the regime and that he had been released only after his family had paid money and he had signed a statement renouncing politics. The author's release was not documented. The State party also maintains that the act of distributing anti-Government pamphlets ought to have resulted in a heavy prison sentence. Given that the payment of money by his family was not proved and that the author had been released after only three months of detention, the State party believes that this can be taken to indicate the unlikelihood of the author's alleged KDP activities.

6.4 The State party then proceeds to review the overall human rights situation in the Syrian Arab Republic and comment on several of the documents submitted by the author with regard to the situation of Kurds in that country. While giving credence to some of the information provided, it recalls the Committee's practice, which holds that the existence in a country of gross, flagrant or massive violations of human rights does not in itself constitute grounds for stating that a person risks being subjected to torture upon his or her return to that country.

6.5 Next the State party considers the author's personal situation with a view to confirming whether there were serious grounds for admitting that he was likely to be subjected to human rights violations in the Syrian Arab Republic. According to the State party, KDP-Iraq was not an illegal organization in Iraq; moreover, it appears to have enjoyed the support of the authorities.

According to various sources, the Syrian security forces persecuted KDP activists only if the security of the Syrian State was threatened by their actions - for example, activities hostile to the Syrian regime, which does not seem to apply in the present case. The State party concludes that under these circumstances it can be concluded that the author ran no special risk of being subjected to treatment in violation of article 3 of the Convention if he returned to the Syrian Arab Republic, particularly as the alleged arrests dated back six and eight years.

6.6 The State party maintains that the documents from KARK-Switzerland[2] and KDP-Europe submitted by the author certifying that he was a member of KDP-Iraq cannot in themselves prove that the author was likely to be subjected to prosecution or treatment that contravened article 3 of the Convention if he was sent back to his country.

6.7 According to the State party, the author never reported that he had been subjected to torture, either during the hearings at the transit centre or to the Federal Office for Refugees. The author's counsel apparently reproached the authorities with failing to question the petitioner on that specific point. The State party replies that it could "legitimately be expected that a person who subsequently claimed he had to leave his country for fear of being subjected again to torture would at least mention this circumstance when questioned in the host country about the reasons for applying for asylum".

6.8 The State party queries the fact that the author only produced a medical certificate dated 20 August 1996[3] stating that he could have been subjected to torture in the past when he appeared before the Swiss Appeal Commission on Asylum Matters and not when filing his initial application for asylum. The State expresses surprise that a seeker of asylum on grounds of torture waited to have his application turned down before producing a medical certificate, whose evidential status was, moreover, compromised by the fact that three years had passed since the alleged facts. The State adds that, even if one considered the author's allegation that he had been subjected to torture in the past to be well founded, it did not follow that he ran a foreseeable personal and present risk of being subjected to torture again if he was returned to the Syrian Arab Republic.[4]

6.9 With regard to the author's fears of being exposed to inhuman and degrading treatment for having left Syrian territory illegally, the State party notes that the author's allegations that he had left the Syrian Arab Republic under threat of reprisals by the Syrian authorities lacked credibility. There is no evidence to back the claim that the author's uncle had been warned of his imminent arrest. However, evidence that the petitioner was under threat at the time of leaving his country is, the State party notes, a prerequisite for the granting of asylum. Moreover, the author has not furnished proof of having left Syrian territory illegally. And even if he had, the penalty for such an offence would be a fine or term of imprisonment, which cannot be considered to be a breach of article 3 of the Convention.

6.10 With regard to the risks incurred by the author for having applied for asylum in Switzerland, the State party considers that the Syrian authorities would not subject him to inhuman or degrading treatment solely on that account, since they are aware of the fact that many of their nationals try in this way to obtain residency permits in Europe. The State has no concrete evidence to the effect that asylum-seekers returned to the Syrian Arab Republic are subjected to treatment that violates article 3 of the Convention.

6.11 Lastly, the State party considers the author's allegation that he would risk persecution because of his close links in Switzerland with movements that opposed the Syrian regime. The State party notes that the author's statements on the subject are very vague and insubstantial, indicating that the activities in question were on a very limited scale; otherwise, the author would have described them in detail to the Swiss asylum authorities in his own interest.

6.12 The State party concludes that, under the circumstances and following careful scrutiny of the case, substantial grounds do not exist for believing that the author would be in danger of being subjected to torture if he was returned to the Syrian Arab Republic. The State party refers to the Committee's general comment of 21 November 1997 in support of its argument that the communication does not contain the minimum factual basis needed to back up the author's allegations. The State requests the Committee to find that the return of the author to his country of origin would not constitute a violation of Switzerland's international obligations.

The author's comments on the State party's observations

7.1 The author submitted his comments on 14 January 2000. With regard to the lack of evidence of arrest and torture, he states that the practical difficulties involved in gathering such evidence have been overlooked. Any attempt to obtain such documents at present would place his family and those connected with him in danger. He claims not to have received any document on his release that could serve as proof of his imprisonment.

7.2 The author draws attention to a number of reports concerning the situation of the Kurds in the Syrian Arab Republic. In particular, he claims that, according to the Amnesty International Report 1999, although some Kurds arrested in 1997 were released in 1999, others were still in prison for distributing pamphlets hostile to the regime.

7.3 With regard to the delay in making the allegation of torture, the author claims that the Committee itself has repeatedly emphasized that it is quite understandable for a torture victim initially to remain silent about his sufferings. As to the certificate containing the findings of torture, the author argues that the Committee does not, in any case, require absolute proof of a risk of future persecution but is satisfied with substantial grounds for fearing a violation of the Convention. The medical report meets the criteria usually required and was issued by an institution of the highest standing (Hôpitaux universitaires de Genève), so that no doubt can be cast on the conclusions of the medical examination.

7.4 With regard to his illegal departure from the Syrian Arab Republic, the author states that he agrees with the State party's comment about the consequences of illegal departure in most cases. In his own case, however, given his political activities, his Kurdish origin and the circumstances of his departure, it should be borne in mind that his illegal departure could be used against him and lead to assaults on his person, in contravention of article 3 of the Convention.

Issues and proceedings before the Committee

8.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It has ascertained, as it is required to do under article 22, paragraph 5 (a), of the

Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes also that all domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. It therefore considers that the communication is admissible. As both the State party and the author have provided observations on the merits of the communication, the Committee proceeds to consider those merits.

8.2 The issue before the Committee is whether the forced return of the author to the Syrian Arab Republic would violate the obligation of the State party under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to the Syrian Arab Republic. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to the country. There must be other grounds indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

8.5 The Committee expresses doubts about the credibility of the author's presentation of the facts, since he did not invoke his allegations of torture or the medical certificate attesting to the possibility of his having been tortured until after his initial application for political asylum had been rejected (paras. 6.7 and 6.8 of the present decision).

8.6 The Committee also takes into consideration the fact that the State party has undertaken an examination of the risks of torture faced by the author, on the basis of all the information submitted. The Committee considers that the author has not provided it with sufficient evidence to enable it to consider that he is confronted with a foreseeable, real and personal risk of being subjected to torture in the event of expulsion to his country of origin.

9. Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the decision of the State party to return the author to the Syrian Arab Republic constitutes no violation of article 3 of the Convention.

Notes

[1] The file contains a document dated 12 July 1995 certifying the author's membership in KDP-Europe, based in London; the document states that the author, whose name is misspelled, was a party member and had "taken part in the resistance movement and in the struggle for peace and democracy".

[2] KARK appears to be a Kurdish academic and intellectual society. The file contains the association's statutes and written testimony from Mr. A. M., a resident of Lausanne, who on 6 March 1996 said that he had visited the Syrian Arab Republic in July 1991 in order to collect material on the human rights situation of the Kurds. He states that to that end he sought the help of KDP-Iraq local offices. He was accompanied on his travels by the author (whose name is again misspelled), who had been introduced to him as someone who was very active in the KDP-Iraq movement and who had therefore been followed and arrested several times by the Syrian security services. The author had told him that because of his membership in KDP-Iraq, his life and the lives of his family members were in danger, and that he could no longer remain in the country because he was constantly being followed by the secret service.

[3] The certificate was drawn up by the Hôpitaux universitaires de Genève on 20 August 1996 at the request of the author's counsel. It is based on two interviews with the author and sets forth the facts as presented by him with details of the acts of torture to which he was allegedly subjected. With regard to his physical condition, the doctors describe it as being within the bounds of normality but mention a number of scars on his body (a fine bow-shaped scar at the base of the first toe of his right foot, three round scars on his left hand and wrist, and a star-shaped scar on his left cheek). With regard to his psychological condition, they say that the author was cooperative, with sound temporal and spatial orientation and without major memory disorders, but that he had trouble remembering specific dates accurately. They note a tendency towards dissociation when scenes of violence were mentioned. A reading of the medical report provoked considerable nervousness and agitation. The doctors consider that the author's description of the scenes of torture are compatible with what is known about the treatment of opponents of the regime in Syrian prisons, especially Mezze prison (see Amnesty International Report 1994, pp. 319-322). The scars correspond to his description of the torture he allegedly suffered, and the lesions are probably the sequelae of torture. Taking this and his psychological condition into account, the doctors diagnose post-traumatic stress syndrome (PTSS), a characteristic disorder of torture victims. The doctors go on to state that "we therefore conclude that there has been a flagrant violation of human rights. Under these circumstances and in view of the fact that the Kurdish issue in Syria has not been settled, the return of [the author] to his country would condemn him to renewed acts of violence ...". The doctors further conclude that the PTSS is in remission for the time being because the author feels safe in Switzerland. His refoulement would probably lead to a return of the symptoms, whose seriousness should not be underestimated. Moreover, as far as treatment is concerned, the

doctors state that, to their knowledge, the type of medical care needed to stabilize the author's condition (physiotherapy and supportive psychotherapy) do not exist in the Syrian Arab Republic.

[4] In this connection, the State party refers to the Committee's jurisprudence, in particular communications I.A.O. v. Sweden (65/1997) and X, Y and Z v. Sweden (61/1996), in which the Committee, while finding that medical certificates established that the authors had been subjected to torture, nevertheless considered that it had not been shown that the authors would be in danger of being subjected to torture if they were returned.

Communication No. 134/1999

Submitted by:	M.K.O. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	Netherlands
Date of communication:	25 May 1999

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 9 May 2001,

Having concluded its consideration of communication No. 134/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The author of the communication is Mr. M.K.O., born in 1970 and a Turkish national of Kurdish origin, currently residing in the Netherlands. The author applied for refugee status in the Netherlands on 22 June 1997. His application was rejected. He claims that his deportation to Turkey would expose him to a risk of torture and constitute therefore a violation by the State party of article 3 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 26 May 1999 and requested it to provide observations on the admissibility and merits of the communication. The State party was also requested, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, to defer the removal of the author to Turkey while his communication was under its consideration.

The facts as presented by the author

2.1 The author comes from a village located in the region of Tunceli, Turkish Kurdistan, where for many years there has been a war between the Turkish army and the Kurds. He claims to have been urged several times by the Turkish military to become a village guard, which he always refused.

2.2 The author alleges that as a village guard he would have to kill Kurds and Alevis, his own people. Because of this refusal, he was very often ill-treated. He was beaten on several occasions by the Turkish militaries. During the winter, the author and other Kurds were forced

to stand barefoot in the snow for hours. The author suffers from a kidney ailment as a result. Sometimes he and other Kurds were threatened with death and their food supplies stopped by the Turkish military. The author also alleges that he was arrested on several occasions and taken to the forest or the mountains where he was tortured.

2.3 When the author's neighbours were arrested for giving food to the guerrillas, he decided to leave Turkey because he was afraid of being arrested for the same reason. He arrived in the Netherlands on 21 June 1997 and applied for refugee status the same day. His request was turned down on 22 August 1997.

2.4 After two unsuccessful appeals to the Ministry of Justice and to the court, on 22 February 1999, the author made a second application for refugee status, which was also rejected as were the subsequent appeals. The date of 26 May 1999 was set for his removal to Turkey.

2.5 The author is an active member of the Kurdish Union in The Hague and in various Kurdish activities. He has run in marathons for the Kurds in the Netherlands and Germany, and has been seen with his Kurdish music band, Zylan several times on MED-TV, a Kurdish television station in Europe which can also be seen in Turkey and which was recently forbidden. On 16 February 1999, he was arrested in the Netherlands along with 300 other Kurds during a demonstration against Abdullah Öcalan's extradition to Turkey. Since then, he has remained in detention because he does not have a residence permit.

The complaint

3. The author alleges that he will be at serious risk of torture if he is removed to Turkey and that the removal decision is therefore a violation of article 3 of the Convention.

State party's observations on the admissibility and merits

4.1 In a submission dated 6 December 1999, the State party transmitted to the Committee its observations on the merits of the communication. In its communication it did not raise any objections with regard to the admissibility of the communication and made a summary of the facts of the case and of the national procedure, as well as of the various arguments made by the author.

4.2 In relation to the merits, the State party considers that not all Kurds from Turkey can be granted asylum and that the author has to prove a personal risk of torture, which he failed to do. Although the State party does not dispute the ethnic origin of the author, it states that the latter was unconvincing on this issue during the asylum procedure; it therefore rejects the allegation by the author that the investigation into his ethnic origin was not conducted with sufficient care.

4.3 The State party maintains that the author has not proved that he would attract special attention from the Turkish authorities because he expressly said that he had never been arrested and had never had any problem despite having helped the PKK. It was only during the appeal

phase of the asylum procedure that the author told the Dutch authorities that he was once arrested by three soldiers in civilian clothes. The author has never furnished a clear explanation for this contradiction.

4.4 The discrimination and degrading treatment to which the author has allegedly been subjected do not necessarily lead to the conclusion that he should be recognized as a refugee because, although daily life for Kurds in south-eastern Turkey is probably not easy, it is not intolerable and "such treatment probably takes place in the large Kurdish community with a certain amount of arbitrariness".

4.5 Even accepting that the author has had problems with Turkish soldiers does not imply that he would risk such treatment again throughout Turkey. Indeed, the author travelled to Istanbul in 1996 and had no problems. He is therefore free to resettle in another part of Turkey.

4.6 Regarding the author's activities in the Netherlands, the State party considers that the fact of being a member of the band Zylan, of having appeared on MED-TV with his band several times, of having attended PKK celebrations, of having competed in marathons as a Kurd and of having participated in a demonstration in support of Abdullah Öcalan and having been arrested during this demonstration do not constitute significant opposition activities and are therefore not of such a nature as to attract the attention of the Turkish authorities. Even his arrest after the demonstration is not significant in this regard because he was arrested along with many other persons.

4.7 In the State party's opinion, there is no element in the author's escape from Turkey or in his activities in the Netherlands that provides substantial grounds for believing that he faces a personal risk of being tortured if he were to be returned in Turkey.

Counsel comments

5.1 In a submission of 26 January 2000, counsel for the author made her comments on the observations of the State party.

5.2 With regard to the Kurdish origin of the author, counsel makes a few remarks in order to explain the confusion that may have emerged during the various interviews. Nevertheless, the ethnic origin of the author is no longer disputed by the State party. Counsel also notes that PKK does not have a membership system for security reasons, which partly explains why the author was not a "member" of any organization.

5.3 Counsel argues that the problems faced by the author while he was in Turkey would indeed draw the attention of the Turkish authorities if the author returned to his country. She also notes that it is usual for more information to become available towards the end of the procedure because more questions are asked and because the author, with only a primary-school education, may have had some difficulties in understanding questions at the beginning of the procedure. Counsel also argues that people applying for refugee status as soon as they arrive in the State party do not have sufficient time to reflect on their declarations and are subjected to a significant number of obligations during the first weeks of the procedure, which may sometimes lead to confusion.

5.4 Concerning Tunceli, the region of origin of the author, counsel contends that life there has indeed become intolerable and, because the place is a symbol of Kurdish resistance, notes that any person from this area would encounter problems throughout Turkey; this implies that the author could not easily resettle in another part of Turkey. Counsel quotes in this regard the Dutch Foreign Minister who stated that the fact of refusing to be a village guard is interpreted as implicit support for the PKK.

5.5 With regard to the demonstration that took place in The Hague on 17 February 1999, counsel mentions that A. Kisaoglu, a Kurd of Dutch nationality, was arrested in Turkey a few days after the demonstration and badly tortured for five days. According to counsel, the Turkish authorities arrested him because they were informed that his son had been arrested during the demonstration in The Hague. However, it appeared later that this was not the case. Counsel considers that this incident demonstrates that the Turkish authorities can obtain information about political events related to the Kurdish question that occur outside Turkey and subsequent arrests or detentions, which raises the possibility of cooperation between the Turkish and Dutch security services.

5.6 Moreover, concerning the author's other activities in the Netherlands, counsel refers to several statements from the Dutch Foreign Ministry according to which MED-TV is considered by the Turkish authorities to be the voice of PKK and that Kurdish music is sometimes forbidden, two elements that would certainly constitute satisfactory reasons for the Turkish authorities to arrest the author upon his arrival in Turkey.

5.7 Relying on various other cases, counsel underlines that a significant number of Kurds who have been repatriated from the State party to Turkey and whose whereabouts could be monitored have been detained and tortured by the Turkish authorities.

5.8 Finally, to the extent that the author stated from the outset of the asylum procedure that he had been tortured, counsel deplores the State party's failure to take steps to assess the medical profile of the author, which it had many opportunities to do.

Additional Comments by the State party

6.1 In a submission dated 6 September 2000, the State party made additional comments on the observations of the author.

6.2 The State party first draws the attention of the Committee to the fact that it no longer disputes the Kurdish origin of the author.

6.3 The State party further notes that there has been some confusion and mistranslation on the part of counsel of the words "torture" and other "ill-treatment", the latter using both terms indifferently.

6.4 The State party still considers that the author has not furnished a convincing explanation as to the reasons why he neglected to mention some elements of his story during the first part of the asylum procedure.

6.5 The State party also firmly rejects the allegations of counsel that the State party has given information to the Turkish authorities concerning the persons detained after the pro-Kurd demonstration.

6.6 In respect of the statement from the Dutch Foreign Ministry on the subject of MED-TV, the State party notes that counsel has cited sentences out of their context and gives the full text of the statements.

6.7 The State party emphasizes that it has given continued attention to the situation of Kurds in Turkey. This is illustrated by the fact that the State party suspended the expulsion of Kurds to Turkey after it had been informed of the death in Turkey of a former Kurdish asylum-seeker in the Netherlands. Following the inquiry into this case and four other cases, to which counsel was presumably referring, the State party noted that the persons concerned had not experienced particular problems with the Turkish authorities after their return. These conclusions were endorsed by the judiciary of the State party, and the Government lifted the suspension on expulsions.

6.8 Finally, the State party considers that the author also has had ample time to obtain medical documents confirming the treatment to which he claims he was subjected.

Issues and proceedings before the Committee

7.1 Before considering any claims contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee also notes that all available domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. The Committee finds therefore that the communication is admissible. The State party and the author have both made observations on the merits of the communication and the Committee therefore proceeds to examine the merits.

7.3 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be

personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.4 The Committee notes the arguments developed by both parties and considers that the author has not given any satisfactory explanation for the contradictions between his different statements to the Dutch immigration authorities. It notes that he fulfilled his military obligation without any appreciable problems and finds that he has not demonstrated that his later activities in the Netherlands could draw the attention of the Turkish authorities to the extent that he would risk being tortured were he removed to Turkey.

7.5 The Committee concludes that the author has not furnished sufficient evidence to substantiate his claim that he would run a personal, real and foreseeable risk of being tortured if he were sent back to his country of origin.

8. As a consequence, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading treatment or punishment, is of the view that the facts as found by the Committee do not constitute a breach of article 3 of the Convention.

Communication No. 142/1999

Submitted by:	S.S. and S.A. (names withheld) [represented by counsel]
Alleged victim:	The authors
State party:	The Netherlands
Date of communication:	12 July 1999

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 May 2001,

Having concluded its consideration of communication No. 142/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The authors of the communication are Mr. S.S., a Sri Lankan national born on 1 April 1963, his wife Mrs. S.A., a Sri Lankan national born on 28 August 1972, and their daughter, B.S., born on 12 October 1997 in the Netherlands. The authors, all currently residing in the Netherlands, allege that their proposed expulsion to Sri Lanka would violate article 3 of the Convention. The authors are represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 18 August 1999. At the same time, the State party was requested, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, not to expel the authors to Sri Lanka while their communication was under consideration by the Committee. In a submission dated 28 October 1999, the State party informed the Committee that authors would not be returned to Sri Lanka while their case was under consideration by the Committee.

The facts as submitted by the authors

2.1 As to Mr. S.S., a member of the Tamil ethnic group, it is stated that he was held in detention by the Tamil Tiger organization LTTE from 10 January 1995 until 30 September 1995 for having publicly criticized the organization and its leader, and refusing to take part in its activities. During the period of detention, he performed tasks such as woodcutting, filling sandbags, digging bunkers and cooking. Before he was detained by LTTE, his father had been detained in his place and he had died in detention of a heart attack. On 30 September 1995, Mr. S.S. escaped from the LTTE barracks and travelled to Colombo.

2.2 On 3 October 1995, he was arrested by police, during a routine check, for inability to show an identity card. He was questioned as to personal details and whether he was involved with LTTE, which he denied. He claims not to have been believed and to have been accused of spying for LTTE and travelling to Colombo to plan an attack. The next day he was released upon the intervention of an uncle and payment of a sum of money, subject to an obligation to report daily to police while staying in Colombo. The author states that he heard that the authorities intended to transfer him to Boosa prison, from which allegedly detainees never emerge alive. On 8 October 1995, Mr. S.S. left the country by air for the Netherlands.

2.3 On 18 December 1995, Mr. S.S.'s request for asylum of 19 October 1995 was denied. An appeal made to the Secretary of Justice on 23 January 1996 was rejected on 16 September 1996. The Secretary's decision was appealed on 30 October 1996, but before the case was brought for hearing Mr. S.S. was informed that the decision of 16 September 1996 was withdrawn. A new decision would be taken after his case had been heard by an independent Advisory Commission on Aliens Affairs (Advies commissie voor vreemdelingzaken).

2.4 As to Mrs. S.A., also a member of the Tamil ethnic group, it is contended that in mid-November 1995 she was also detained by LTTE in an attempt to determine her husband's whereabouts and activities. While in the LTTE camp, she was forced to perform duties such as cooking and cleaning. After being taken to hospital at the end of March 1996, she escaped on 3 April 1996.

2.5 On 17 June 1996, she was arrested by the Eelam People's Revolutionary Liberation Front (EPRLF). She states that she was accused by a third party of collaboration with LTTE and was repeatedly questioned in this regard by EPRLF, but explained that she had performed forced labour for LTTE and why. She states she was not ill-treated but occasionally struck. She was handed over to the Sri Lankan authorities, held in custody and made to identify various alleged LTTE members at roadblocks. In mid-August 1996, she was able to escape after a convoy in which she was travelling struck a mine. She travelled to Colombo in late August and left the country by air for the Netherlands on 12 September 1996. It is alleged, without any details being provided, that because of her escape her uncle was killed by the authorities.

2.6 On 18 November 1996, Mrs. S.A.'s request for asylum of 16 October 1996 was denied. An appeal made to the Secretary of Justice on 31 December 1996 was rejected on 20 March 1997. The following day Mrs. S.A. was informed that the decision was withdrawn and that a new decision would be taken after hearing before the Advisory Commission.

2.7 Mr. S.S. and Mrs. S.A. were both heard before the three-person Advisory Commission on 2 February 1998 which, in an extensive and fully reasoned judgement, unanimously recommended that the Secretary of Justice reject the authors' appeal against the original denial of asylum.[1] On 30 June 1998, the Secretary of Justice ruled that the authors were not eligible for refugee status and that they were in no real danger of being subjected to inhuman treatment. On 23 July 1998, the authors appealed this decision to The Hague District Court, which found the appeals unfounded on 25 January 1999.

The complaint

3. The authors contend that there are substantial grounds to believe that, if returned, they will be subjected to torture. They state that, as Tamils from the northern Tamil town of Jaffna, their presence in Colombo will give rise to suspicions on the part of the authorities of connections to LTTE. Having been suspected of such connections already, there is said to be nowhere safe in Sri Lanka where they could go. They contend that the authorities profoundly believe them to be opponents of the regime. Citing unspecified reports on the general situation in Sri Lanka by Amnesty International, UNHCR and other sources, the authors claim a real risk of being detained and tortured in the event of their return. Accordingly, their forced return is claimed to violate article 3 of the Convention.

Observations of the State party

4.1 As to the admissibility of the communication, by letter of 28 October 1999, the State party accepts that there are no further avenues of appeal available against the decision of the District Court and that accordingly it is not aware of any objections to the admissibility of the communication.

4.2 As to the merits, by letter of 18 February 2000, the State party argues that, taking into account the observations made by the authors during their asylum procedure viewed in the light of the general situation in Sri Lanka, there is no reason to assume that substantial grounds exist for believing that the authors would run a real and personal risk of being subjected to torture if returned. Accordingly it considers the communication ill-founded.

4.3 The State party notes at the outset that under its law, due to a high population density and consequent problems, aliens are admitted only if its international obligations, essential Dutch interests or compelling humanitarian reasons require it. The process governing asylum is that the applicant is interviewed twice after submitting an application, by the Immigration and Naturalization Service (INS), if necessary with interpreters. Applicants may avail themselves of legal assistance at both interviews. Written reports are drawn up upon which the applicant may comment and submit corrections and additions. In reaching a decision, INS is assisted by country reports issued by the Ministry of Foreign Affairs, which draws on NGO sources and reports from Dutch missions. If an objection to a decision is rejected, the Advisory Commission is consulted in cases concerning a fear of persecution. The Commission hears the applicant, invites UNHCR to comment, and makes a recommendation to the Secretary of Justice. A final appeal from the Secretary's decision is possible to the District Court (Arrondissementsrechtbank). Legal aid is available throughout the appeal procedure.

4.4 The State party then goes on to set out its understanding of the general human rights situation in Sri Lanka, based on the relevant November 1998 country report issued by the Ministry of Foreign Affairs. The report notes areas of instability and human rights violations in the conflict areas, including brief detentions of many Tamils. However, it is the a view of the State party and other European Union member States that the situation in Government-controlled

areas is not such that the return to these areas of persons whose cases have carefully been considered would, by definition, be irresponsible. The State party emphasizes that the Tamil human rights situation is taken into account by the Secretary of Justice in each individual case, as it is in the District Court's reviews of those decisions.

4.5 In a series of decisions, the District Court has held the Secretary to have acted "in all reasonableness" in judging that the overall situation in Sri Lanka no longer entails particular hardship for returnees. Regarding torture in particular, the Court has held that, even assuming severely under-reported data on torture cases in the Ministry's report, there would be no significant grounds to conclude that the likelihood of torture of Tamils in Colombo who belong to "high risk" groups (such as young unidentified men) is so great in general that the group as a whole runs a substantial risk of being so exposed.

4.6 The report notes that all relatively young Tamils who speak little Sinhalese and whose documents show them as coming from the north stand a chance of being held for questioning following an identity check. This is particularly so if one has recently arrived in Colombo from a war zone and has no identity documents or valid reason for being in Colombo, or has failed to register upon arrival. The majority are released within 48-72 hours once their identity is established and their reasons for being in Colombo have been explained. Those held longer may be subjected to rougher treatment, while those held for more than a week on suspicion of LTTE involvement face a higher risk of ill-treatment. Persons held for more than three months on firm evidence of involvement face a high risk of torture.

4.7 Accordingly, the State party argues that the situation in Sri Lanka is not such that for Tamils in general (in particular young men), even if they are (or have recently come) from the north, substantial grounds exist for believing that they risk torture if returned. In this regard, the State party further points to the District Court's consideration of the Ministry of Foreign Affairs country report and the wide variety of other sources, as well as the State party's willingness to have the Committee assist in putting an end to violations of the Convention, which was demonstrated at the consideration of its last periodic report.

4.8 Turning to the individual cases, the State party points out, in respect of Mr. S.S., that his arrest in Colombo was for failure to identify himself during a routine check. It is relevant that several others were arrested at the same time, and the arrest cannot be regarded as an act specifically directed against the author. Mr. S.S.'s subsequent release, apparently to do as he pleased, further speaks against the authorities taking a particular interest in him. As to the obligation to report daily, the State party refers to its Ministry of Foreign Affairs country report explaining that an obligation to report after release does not signify that the person should be classified as wanted by the police, nor does a failure to comply with this obligation automatically mean that the person's name is placed on a list of serious suspects. In this case, the fact that Mr. S.S. was under an obligation to report would not put him at increased risk in the event of a return.

4.9 Additionally, the State party notes that Mr. S.S's statement that he was on a transfer list for Boosa prison is based entirely on uncorroborated suspicions. In any event, given that he was released after a day, it is implausible that his name was on that list. Furthermore, if the author believed that he was under close surveillance by the Sri Lankan authorities for suspected LTTE

activities, it is hard to see why he was willing to take a considerable risk by leaving the country from Colombo airport. The author's statements on the fate of his father also are inconsistent. Contrary to the account presented in the communication and at the first interview that his father had died in captivity of a heart attack, the author stated subsequent to the second interview that his father had been held at an earlier point by LTTE for a week and had been released upon suffering a minor heart attack.

4.10 As to Mrs. S.A.'s position, the State party also argues that her account contains no indication that she would be at any greater risk than other Tamils upon returning to Sri Lanka. Regarding her arrest by and possible suspicion of involvement with LTTE, the State party points out that it is important that her work was performed under duress. She cannot be regarded as any kind of LTTE activist, and the activities she performed were in the service sphere. In the view of her background and experience, the State party does not consider it plausible that the Sri Lankan authorities would consider her a valuable informant, and in this respect she is no different from many other Sri Lankan Tamil who at some time had been detained in an LTTE camp.

4.11 The author's contention that the Sri Lankan authorities took an increased interest in her is also not supported by the fact that she left the country in the manner easiest to control, that is from Colombo airport. Regarding her allegation that her uncle was killed by the authorities on account of her escape, the State party points out that the contention is based on hearsay. No corroboration or evidence of any kind has been furnished of any link between her escape and his death. The State party points out that the District Court's judgement of 25 January 1999 regarded Mrs. S.A.'s testimony as unreliable.

4.12 The State party refers to the Committee's jurisprudence that, even assuming the existence of a gross pattern of serious violations, additional grounds must be shown why an individual would personally be at risk of torture upon return to a country.[2] Moreover, "substantial grounds" for apprehending such a fate must go beyond a mere possibility or suspicion of torture.[3] Applying these tests to the instant case, the State party argues, regarding the inconsistencies outlined above, that the authors have failed to argue convincingly that there are substantial grounds for fearing a "foreseeable, real and personal risk" of torture in their cases. The authors have not satisfactorily established that they are at greater risk than other Tamils resident in Colombo. They have never put themselves forward as opponents of the Sri Lankan authorities, nor have they belonged to a political party or movement. Nor do their accounts suggest close relatives have been active, politically or otherwise, and have therefore attracted the attention of the Sri Lankan authorities. The activities that the authors profess to have performed under duress for LTTE are trivial in nature and extent.

Additional observations by the author

5.1 By letter of 10 April 2000, the authors restate their contention that they have demonstrated substantial grounds for believing that they are at personal risk of torture, thereby putting the State party in breach of article 3 of the Convention in the event of a return.

5.2 The authors claim that both parents left the country, separately, on false passports and therefore did not experience any problems in leaving. They contest the State party's claim that the authorities impute no political involvement to them, stating that while they were not

officially members of any group, both were suspected of connections to LTTE. Mr. S.S. was suspected of spying for LTTE and being in Colombo with ill intentions, while Mrs. S.A. was accused of working for LTTE and employed to identify LTTE members at roadblocks. In this regard, the authors contend that the Ministry of Foreign Affairs report ascribes a risk of being held for more than a week to Tamils suspected of having knowledge of LTTE.

5.3 As to Mr. S.S.'s account, the authors reject the State party's assertion that, upon Mr. S.S.'s release from police custody, he was free to do as he pleased and that they had no special interest in him; how could this be the case if he had to report to the police daily? The authors reject the State party's classification, in the absence of proof, of Mr. S.S.'s placement on the Boosa transfer list as "implausible", claiming that such a conclusion does not follow simply from being released after a day. Nor, claim the authors, had Mr. S.S.'s statements during the asylum procedure previously been doubted or considered implausible, nor had there been a request for further information on this aspect. There was therefore no reason to doubt this particular important statement. Similarly, simply because the account of the death of Mr. S.S.'s father was perhaps mistakenly transcribed did not make the statement unreliable.

5.4 As to Mrs. S.A.'s account, the authors wish to underline that she had told the authorities that she had been forced to work for LTTE, and the State party's statement that she cannot be regarded as an LTTE activist cannot be substantiated. The State party allegedly ignores her use as an informer to denounce alleged LTTE members. Concerning her uncle's death, the authors claim that, while unable to produce a death certificate, there is no reason to doubt the information. The District Court's judgement on witness credibility is no reason to doubt her statements, which the authors contend had never been doubted by the State party. Therefore, Mrs. S.A. ought to be given the benefit of the doubt on this issue.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted, and that all other admissibility requirements have been met. Accordingly, the Committee considers the communication admissible. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the expulsion of the authors to Sri Lanka would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the authors would be in danger of being subjected to torture if returned to Sri Lanka. In reaching this decision, it must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern

of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individuals concerned would be personally at risk of being subjected to torture. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country does not by itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon returning to that country; there must be other grounds indicating that he or she would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be in danger of torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, which reads:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.5 In the present case, the Committee notes that the authors were provided with a comprehensive examination of their claims, with multiple opportunities to contribute to and correct the formal record, with an investigation by an independent advisory commission as well as judicial review. The Committee notes the attention drawn by the State party to the determinations of its various authorities of a number of inconsistencies and contradictions in the authors' accounts, casting doubt on the veracity of the allegations. It also notes the explanations provided by the authors in that respect.

6.6 The Committee finds that the authors have failed to show significant grounds that the evaluation of the State party's authorities was arbitrary or otherwise unreasonable, in concluding generally that the likelihood of torture of Tamils in Colombo who belong to a "high risk" group is not so great that the group as a whole runs a substantial risk of being so exposed. Nor have they demonstrated any inaccuracy in the State party's conclusion that the situation in Sri Lanka is not such that for Tamils in general, even if they are from the north of the country, substantial grounds exist for believing that they risk torture if returned from abroad.

6.7 As to the authors' individual circumstances, the Committee considers that the respective detentions suffered by the authors do not distinguish the authors' cases from those of many other Tamils having undergone similar experiences, and in particular they do not demonstrate that the respective detentions were accompanied by torture or other circumstances which would give rise to a real fear of torture in the future. In the circumstances, the Committee considers that the authors have failed to demonstrate, generally, that their membership of a particular group, and/or, specifically, that their individual circumstances give rise to a personal, real and foreseeable risk of being tortured if returned to Sri Lanka at this time.

6.8 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the authors' removal from the State party would not constitute a breach of article 3 of the Convention.

Notes

[1] UNHCR did not take up an invitation from the Advisory Commission to make representations on behalf of the authors in this case.

[2] A.D.D. v. The Netherlands (communication No. 96/1997).

[3] E.A. v. Switzerland (communication No. 28/1995).

Communication No. 144/1999

Submitted by: A.M. (name deleted)

Alleged victim: The author

State party: Switzerland

Date of the communication: 12 August 1999

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2000,

Having concluded its consideration of communication No. 144/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available by the author of the communication and the State party,

Adopts the following decision:

1.1 The author of the communication is Mr. A.M., born in 1974 and a citizen of Chad. He is currently residing in Switzerland, where he applied for asylum on 19 October 1998. His application having been turned down, he maintains that his forcible repatriation to Chad would constitute a violation by Switzerland of article 3 of the Convention against Torture.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the communication to the attention of the State party on 4 October 1999. At the same time, the Committee, pursuant to rule 108, paragraph 9, of its rules of procedure, requested the State party not to expel the author to Chad while his communication was under consideration. In a submission dated 26 November 1999, the State party informed the Committee that measures had been taken to ensure that the author was not returned to Chad while his case was pending before the Committee.

The facts as submitted by the author

2.1 The author has been trained in computing. He was an active member of the Chadian Human Rights League (LTDH), vice-president of one of the components of the Alliance Nationale de Résistance (ANR) and acting vice-president of the Union des Jeunes Révolutionnaires (UJR) for an 18-month period during the president's absence. After this period he was denounced to the security forces by agents who had infiltrated those bodies.

2.2 On 16 September 1998, soldiers came to the author's home during his absence. A police officer friend advised him to leave his house. After he had gone into hiding at his mother's home, the soldiers returned to his house at night. This convinced him he should leave the country.

2.3 The author then requested asylum in Switzerland but his request was turned down. Thereupon he was allegedly forced by the Swiss authorities to contact the Chadian Embassy in France in order to organize his return home. The embassy officials reportedly refused to assist him as they claimed they could not ensure his safety unless he expressly renounced the opposition movement and supported the existing regime.

Merits of the case

3. The author states that, as he is known to the security forces in Chad, he would run a real risk of ill-treatment if he returned there. He considers that it has been sufficiently established, in particular by the International Federation of Human Rights (FIDH), that human rights are being violated on a massive scale in Chad. Moreover, the Swiss Appeal Commission on Asylum Matters has itself recognized that members of LTDH, such as the author, are liable to have serious difficulties with the Chadian security forces. Three LTDH activists disappeared after they were arrested by Sudanese security forces in April 1998 and handed over to the Chadian authorities.

The State party's observations on the admissibility and merits of the communication

4.1 The State party has not contested the admissibility of the communication; in a letter dated 4 April 2000 it commented on its merits.

4.2 The State party points out that a consistent pattern of flagrant or massive violations of human rights in a country does not in itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. There must be other grounds indicating that the individual concerned would be personally at risk.

4.3 In the present case, the State party considers that the risk alleged by the author is insufficiently substantiated. The author's explanations of his political activities were general and vague. At the first hearing relating to his application for asylum, he was unable to provide the names of the organizations he had worked for. Moreover, the information he gave on LTDH was erroneous, and the attestation by the ANR representative which he produced did not indicate clearly what role he played in ANR. His membership card shows an enrolment date that does not correspond to the date he mentioned to the Swiss authorities. In addition, the State party possessed information to the effect that ANR was not known as an opposition movement in Chad.

4.4 The State party also considers that the account the author has given is not plausible. With regard to his allegations that soldiers were looking for him, it is unthinkable that, if they had really wanted to apprehend him, they would not have gone to his place of work, given his statement that he continued going to work even after the soldiers had shown up at his home, or to his mother's home.

4.5 The State party also refers to the Committee's general comment on article 3, to the effect that considerable weight will be given by the Committee to findings of fact that are made by organs of the State party, and stresses that the communication is only one page long.

4.6 The State party points out that, contrary to the author's claim, ANR has subsidiary bases in the Sudan and the Central African Republic, and its zone of operation is located in eastern Chad. This has been confirmed by documents produced by the author himself. The State party further maintains that the author claimed, on one occasion, that he had been prosecuted for having incited young people to rebel, and on another, that his prosecution was the result of the work of informants who had infiltrated ANR or the youth movement.

4.7 The State party considers that the author's statements regarding his behaviour after the alleged attempts to arrest him and his escape route are again implausible. At the hearings he claimed that he had gone to work during the three or four days preceding his departure, which seems highly unlikely for a person wanted by the police. Moreover, he took the longest and most complicated route across the whole of Chad and the Libyan Arab Jamahiriya on his way to Europe, whereas two of his brothers live in Cameroon and he himself had specialized in smuggling people into Nigeria.

4.8 The State party further points out that the author has never claimed to have been subjected to torture in the past or claimed that relatives of his were harassed because of his activities; he has not pursued his political activity since his arrival in Switzerland.

4.9 The State party points out that this communication is the first occasion when the author has referred to the Union des jeunes révolutionnaires and to his position as vice-president. Until this point he had mentioned only the Chadian Revolutionary Party, the ANR "component" to which he referred having never been clearly identified. With regard to his membership in LTDH, the Swiss Appeal Commission on Asylum Matters clearly stated that, apart from the bogus membership card referred to above, his membership did not sufficiently establish that he ran the risk of being subjected to torture. With regard to the refusal of the Chadian Embassy in France to issue the necessary travel documents to him, the State party observes that the letter from the Embassy makes no mention of the fate awaiting him upon his return to Chad. It merely states that the Chadian authorities are unable to provide such documents. Moreover, if the author was really wanted by the Chadian authorities, they would most likely have encouraged him to return.

The author's comments

5.1 In a letter dated 20 May 2000, the author commented on the State party's observations on the merits of the communication.

5.2 The author first draws the Committee's attention to the fact that the human rights situation in Chad has continued to deteriorate since 1994. He backs up this statement with various documents and press clippings. Having been a member of LTDH, ANR and UJR, he is convinced that, if arrested, he would be subjected to torture.

5.3 With regard to the State party's observation that he was unable at the first hearing to provide the names of the organizations he was working for, he points out that it was a particularly short hearing and he was not questioned on that point. The subsequent hearings were longer and more detailed, allowing the author to be more specific about his activities.

5.4 As to the discrepancy between the date of joining LTDH shown on his membership card and the date he mentioned in his statements, the author claims that an error was made on the card and he was unable to have it corrected. He also states he had indeed named Mr. Ngare Ada as being acting president of the LTDH.

5.5 As to ANR, the author is surprised that the State party has not heard that the organization is part of the opposition movement in Chad. He has provided several press clippings showing this to be the case, in particular articles referring to a round-table meeting organized in Gabon in 1996. In addition, the author notes that there was an error in the ANR attestation in that he had not sought asylum in the Netherlands but had been unable to have the document corrected.

5.6 Regarding the route he took when fleeing from Chad, the author believes that the route through the Libyan Arab Jamahiriya was less closely watched and the safest one for him to take. He points out that the border with Cameroon is much more closely guarded and there was a strong chance of his being recognized there.

5.7 Lastly, the author does not recall having mentioned that he had gone to work after the soldiers had started looking for him. At that point he had been unable to take any practical steps himself, and it was his wife who had organized his escape from the country.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes also that all domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. It therefore considers that the communication is admissible. As both the State party and the author have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Chad would violate the obligation of the State party under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Chad. In reaching that decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not in itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to the country. There must be other grounds indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.5 In the present case, the Committee notes the State party's observations to the effect that the author's statements concerning the alleged risks of torture are vague and general, at times implausible, at times inaccurate and at times inconsistent.

6.6. The Committee finds that the author has not mentioned any forms of persecution to which he was subjected in his country of origin. He was never ill-treated or tortured; nor was he ever questioned or detained by the security forces.

6.7 The Committee also finds that the author has not produced conclusive evidence of, nor demonstrated convincingly his membership of, or activities in, the Chadian Human Rights League, the Alliance nationale de résistance or the Union des jeunes révolutionnaires.

6.8 The Committee therefore finds that it has not been given enough evidence by the author to conclude that the latter would run a personal, real and foreseeable risk of being tortured if returned to his country of origin.

6.9 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the decision of the State party to return the author to Chad does not constitute a breach of article 3 of the Convention.

Communication No. 147/1999

Submitted by:	Y.S. (name deleted) [represented by counsel]
Alleged victim:	The author
State party:	Switzerland
Date of the communication:	7 October 1999

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2000,

Having concluded its consideration of communication No. 147/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available by the author of the communication and the State party,

Adopts the following decision:

1.1 The author of the communication is Mr. Y.S., a Turkish citizen of Kurdish origin born on 7 June 1953 and currently residing in Switzerland, where he applied for asylum on 18 June 1998. His application having been turned down, he maintains that his forcible repatriation to Turkey would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 21 October 1999. At the same time, the State party was requested, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, not to expel the author to Turkey while his communication was under consideration by the Committee. In a submission dated 14 December 1999, the State party informed the Committee that steps had been taken to ensure that the author was not returned to Turkey while his case was pending before the Committee.

The facts as submitted by the author

2.1 The author and Ms. S., Turkish nationals of Kurdish origin, married in 1977 and then lived in their home in Elazig, a town in south-eastern Turkey. At that time the author owned two shops selling electrical appliances, one in Elazig and the other in Pertek, a district of the city of Tunceli where he had grown up. In 1991, he closed the shop in Pertek, and at the end of 1994 closed the shop in Elazig because of constant harassment by the police.

2.2 Since the 1980s, the author had been an active supporter of the leftist Kurdish party known as PSK (Socialist Party of Kurdistan), which published a newspaper entitled Oezg.rl.k.Yolu. The author would read and sell this paper, the name of which was often changed because it was regularly banned. At the same time, he was an activist in the Turkish Human Rights Association (IHD).

2.3 On 21 March 1993, two IHD representatives in Elazig were murdered. Their bodies were found in the street bearing obvious signs of torture: their ears had been cut off and their eyes put out. The author attended their funerals.

2.4 Until 1994 the author was repeatedly harassed by the police because of his opinions and political activities. In 1994, the author's shop was raided by the police, who found a copy of the above-mentioned newspaper and other PSK publications. The author was forced to board a minibus and taken blindfolded to an unknown place. For three days he was severely tortured in an attempt to make him give information to the police and to become an unofficial collaborator. Despite the torture methods used, he refused to give any information or to become an informal collaborator. After three days he was released. He continued to work in his shops despite constant police harassment. At the end of 1994, he decided to close the shop in Elazig.

2.5 From then on, the author and his family had no fixed abode, living in three different places: in Kizilkale, where the author's parents have a farm; in Mersin, where he owns another apartment; and in Elazig, in a dwelling owned by a friend which they rented a few months after fleeing.

2.6 One night in April 1996, the police broke into the rented apartment in Elazig where the author and his family were sleeping. The author was beaten and taken to a place where he was physically and psychologically tortured for two and a half days. He then agreed to work for the police, who said that he could begin working in two weeks' time. On being released, he returned to his home, collected his family and hid them at a friend's home until they left for Istanbul. While his family members were with this friend, the author's eldest son, aged 17, was arrested by the police while on his way to see his grandfather and was held in custody. The police informed him that he would not be released unless his father came to fetch him in person. On learning of this, the author and his family left for Istanbul, where they stayed at the home of one of his brothers.

2.7 On 4 June 1996, the author, his wife and another son caught a plane and, via Milan, arrived illegally in Switzerland on 5 June 1996. All of them were in possession of their passports.

2.8 On the day of their arrival in Switzerland, the author and his family applied for asylum. Their application was rejected by the Federal Office for Refugees on 27 May 1998. The author argues in particular that, in support of its decision refusing him refugee status, the Federal Office for Refugees maintained that he had given contradictory information concerning his place of residence between 1994 and 1996. The author lodged an appeal against this decision, which was rejected on 3 August 1999 on the grounds that his pleas were unconvincing. In this appeal, he requested a second medical examination, which was refused.

2.9 The author states that he arrived in Switzerland traumatized by the torture he had undergone. He began a course of medical treatment on 9 July 1996 and he was also advised to obtain psychological treatment. On 8 April 1997, the doctors sent the Federal Office for Refugees a report stating that the author should spend three weeks in hospital because of pains in his spinal column. On 18 April 1997, a psychiatric report requested by the Federal Office for Refugees found that he was suffering from post-traumatic stress disorder.

The merits of the complaint

3. The author states that if he were returned to Turkey he would be arrested, would again be tortured and might be killed in an extrajudicial execution.

The State party's observations

4.1 In a note verbale dated 14 December 1999, the State party declares that it does not contest the admissibility of the communication.

4.2 As to the merits of the communication, the State party explains that the Swiss Appeal Commission on Asylum Matters considered that the author's statements concerning the period from 1994 until his second arrest in 1996 were not credible since he had no longer been in Elazig as from 1994. Moreover, it is difficult to believe that the author would have hidden at the home of one of his friends, T.K., since that person was particularly vulnerable politically and his telephone was being tapped by the Turkish security forces. In the opinion of the Federal Office for Refugees, there was no causal link between the author's possible arrest in 1993 and his departure from Turkey in 1996.

4.3 Furthermore, the State party emphasizes that the Swiss Appeal Commission on Asylum Matters, unlike the Federal Office for Refugees, considers that the allegations concerning the author's arrest and subsequent torture are also lacking in credibility. It was highly doubtful that the author would have been able to continue his business activities for a period of 18 months after having been arrested and tortured, given the effectiveness of the repression by the Turkish security forces.

4.4 Similarly, the State party points out that the medical examination of the author simply accepted at face value the author's explanation of the causes of the disturbances from which he was suffering, without questioning them. For that reason the Swiss Appeal Commission on Asylum Matters refused to allow a second medical examination.

4.5 In the view of the State party, the arguments presented by the author in his communication add nothing to those presented to the Swiss authorities. On the contrary, in his communication he claims that he was tortured not in 1993 but in 1994, whereas in the Swiss internal proceedings he repeated on several occasions that the events did take place in 1993, in July at the latest.

4.6 In general, the State party entirely endorses the grounds adduced by the Swiss Appeal Commission on Asylum Matters in support of its decision to reject the author's application for asylum.

4.7 In the light of article 3 of the Convention, the State party points out that, in accordance with the Committee's jurisprudence, this provision provides no protection to the author, who simply maintains that he is afraid that he will be arrested on his return to his country.

4.8 The State party questions the veracity of certain facts to which the author has referred only in his communication, such as the name and address of the friend at whose home he claims to have sought refuge. Furthermore, he gave the Committee this information on a confidential basis and on condition that the Swiss authorities took no action to verify its authenticity. However, the State party could also have obtained this information in the same conditions.

4.9 The State party points out that the inquiries undertaken by the Swiss Embassy in Ankara have shown that the author was not wanted by the police. His name does not appear in any police records in relation to possible criminal or political activities. Moreover, it was not until investigations had been carried out by the Embassy that the author was obliged to admit that he owned a home in Mersin, a fact which he had initially concealed from the Swiss authorities.

4.10 On the question of the medical certificates, the State party considers that they are not sufficient to eliminate the contradictions and implausibilities contained in the author's statements. The Swiss Appeal Commission was by no means convinced that the post-traumatic disturbances from which he claimed to be suffering were the consequence of the acts of torture which he alleges. In this context, it must be emphasized that the person who conducted the medical examination was both the therapist and the person who prepared the expert report.

4.11 With the exception of the alleged arrest of his eldest son in April 1996, the State party considers that the author has never demonstrated that members of his family or members of his wife's family have been sought or intimidated by the Turkish authorities, let alone arrested or tortured. This fact leads to the view that the author and his family would therefore be in no danger of being arrested or tortured in the event of their return to Turkey.[1]

4.12 Similarly, the author has never demonstrated that he has engaged in activities which might have been beneficial to PSK. He was not a member of this party but merely a sympathizer and, even in this capacity, he acknowledged that he had never distributed brochures for the party.

4.13 Lastly, the State party considers that the author's explanations concerning the manner of his departure from Turkey with his family are open to question. The Swiss Appeal Commission on Asylum Matters considered it unlikely that a person wanted by the police would have been able to leave Turkey from Istanbul airport without let or hindrance. In view of the extremely strict security checks carried out at this airport, it is likely that a false or forged passport would have been detected. Moreover, the State party considers implausible the contention that the passports were in the possession of a third party.

4.14 The State party accordingly considers that the author's statements do not permit the conclusion that there are substantial grounds for believing, in accordance with article 3, paragraph 1, of the Convention, that the author would be in danger of being subjected to torture if the decision to return him to Turkey were carried out.

The author's comments

5.1 In a communication dated 14 July 2000 the author commented on the State party's observations.

5.2 Concerning the date of the first arrest, he states that his counsel admits having himself made a mistake over the dates, probably because the author, too, confused them at the time of the second interrogation. Nevertheless, while making it clear that this arrest occurred in 1993, the author points out that it was not questioned by the Swiss authorities.

5.3 As to his work within the party, the author wishes to make it clear that, at his second interview, he stated that he shared the party's ideas and supported the party, but that he did not play an active part in it. In addition, he makes it clear that he played a limited role in distributing the party newspaper. Lastly, he recalls that he was arrested in 1993 because party newspapers had been found in his apartment and he had been accused of having distributed pamphlets.

5.4 The author recalls that, in his appeal to the Swiss Appeal Commission on Asylum Matters, he was prepared to give his friend's name and address on condition that that information was not used by the Swiss Embassy in order to carry out inquiries into their relationship.

5.5 Concerning the inquiries carried out by the Swiss authorities in Turkey, the author considers that it is impossible for a Turkish security organization to give such information to Switzerland. As to the apartment in Mersin, the author did not consider that information to be sufficiently important. Furthermore, it was not true that they had moved completely from Elazig to go and live in Mersin, as the Swiss authorities maintained. Consequently, it could not be said that it was impossible for the author to be arrested in Elazig.

5.6 As to the veracity of the medical examination conducted by Dr. M., if the Federal Office for Refugees had not contested the veracity of the torture in 1993, the author wonders why the possibility that he was still traumatized by that torture should be ruled out, when it was known that he had been forced to remain standing in freezing water and that his fingers had been squeezed with pincers. Furthermore, Dr. M.'s description of the report as an "expert report" was motivated by the request made by the Federal Office for Refugees. However, the State party had provided no information as to the form that the report should take. Similarly, the psychiatric diagnosis of post-traumatic stress disorder does not depend on measurable objective signs. In any judicial procedure, if the medical report is considered to be unsatisfactory, a second report must be requested.

5.7 In the opinion of the State party, the author's brothers have not been persecuted in Istanbul and Izmir because of him. Moreover, the State party considers that the author and his family could return to Turkey without any problem. However, the arrest of the author's eldest son is not contested. In this connection, the author maintains that his brothers and sisters live in Istanbul and that he had little contact with them; furthermore, they were too far from Elazig to be able to give any information about him. As to the author's eldest son, he has not lived in Elazig since the time the author arrived in Switzerland. The year the author left, the son moved to Istanbul to live with his family.

5.8 As to the State party's argument that the author has ceased to work for PSK since his arrival in Switzerland, the author states that PSK is very active in Switzerland, notably in Lausanne and Basel, but not in Bern where he lives. Nevertheless, the author regularly attends its meetings.

5.9 Concerning the State party's doubts that the author had lived with a friend who worked for PKK, the author maintains that his friend had completely concealed his activities from the security forces. The security forces had, however, visited Mr. K. in order to prevent him from participating in certain activities. Mr. K. was quite old and died in 1999.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It also notes that all domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. It therefore considers that the communication is admissible. As both the State party and the author have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the return of the author to Turkey would violate the obligation of the State party under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture if he was returned to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to the country. There must be other grounds indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.5 The Committee notes that the medical examination undergone by the author indicated the presence of post-traumatic stress.

6.6 However, on the basis of information submitted by the author, the Committee notes that the events which prompted his departure from Turkey date back to 1993 and appear to be linked in particular to his relations with PSK. The purpose of the arrests and torture which he says he underwent in 1993 and 1996 seemed to be to elicit information or to induce him to collaborate with the security forces. On the other hand, there is no indication that since his departure from Turkey in 1996 the members of his family, and notably his son, have been sought or intimidated by the Turkish authorities. Moreover, the Committee takes note of the information furnished by the Swiss Embassy in Ankara, which establishes that the Turkish police have no file on the author.

6.7 In these circumstances, the Committee considers that the author has not furnished sufficient evidence to justify his fear of arrest and torture on his return.

6.8 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the decision of the State party to return the author to Turkey does not constitute a breach of article 3 of the Convention.

Note

[1] Cf. H.D. v. Switzerland, communication No. 112/1998 (para. 6.5), and A.L.N. v. Switzerland, communication No. 90/1997 (para. 8.5).

Communication No. 149/1999

Submitted by:	A.S. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	6 November 1999

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 November 2000,

Having concluded its consideration of communication No. 149/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The author of the communication is A.S., an Iranian citizen currently residing with her son in Sweden, where she is seeking refugee status. The author and her son arrived in Sweden on 23 December 1997 and applied for asylum on 29 December 1997. Ms. S. claims that she would risk torture and execution upon return to the Islamic Republic of Iran and that her forced return to that country would therefore constitute a violation by Sweden of article 3 of the Convention. The author is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted communication No. 149/1999 to the State party on 12 November 1999. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the author to the Islamic Republic of Iran pending consideration of her case by the Committee. In a submission dated 12 January 2000 the State party informed the Committee that the author would not be expelled to her country of origin while her communication was under consideration by the Committee.

The facts as submitted by the author

2.1 The author submits that she has never been politically active in the Islamic Republic of Iran. In 1981, her husband, who was a high-ranking officer in the Iranian Air Force, was killed during training in circumstances that remain unclear; it has never been possible to determine whether his death was an accident. According to the author, she and her husband belonged to secular-minded families opposed to the regime of the mullahs.

2.2 In 1991, the Government of the Islamic Republic of Iran declared the author's late husband a martyr. The author states that martyrdom is an issue of utmost importance for the Shia Muslims in that country. All families of martyrs are supported and supervised by a foundation, the Bonyad-e Shahid, the Committee of Martyrs, which constitutes a powerful authority in Iranian society. Thus, while the author and her two sons' material living conditions and status rose considerably, she had to submit to the rigid rules of Islamic society even more conscientiously than before. One of the aims of Bonyad-e Shahid was to convince the martyrs' widows to remarry, which the author refused to do.

2.3 At the end of 1996 one of the leaders of the Bonyad-e Shahid, the high-ranking Ayatollah Rahimian, finally forced the author to marry him by threatening to harm her and her children, the younger of whom is handicapped. The Ayatollah was a powerful man with the law on his side. The author claims that she was forced into a so-called sighe or mutah marriage, which is a short-term marriage, in the present case stipulated for a period of one and a half years, and is recognized legally only by Shia Muslims. The author was not expected to live with her sighe husband, but to be at his disposal for sexual services whenever required.

2.4 In 1997, the author met and fell in love with a Christian man. The two met in secret, since Muslim women are not allowed to have relationships with Christians. One night, when the author could not find a taxi, the man drove her home in his car. At a roadblock they were stopped by the Pasdaran (Iranian Revolutionary Guards), who searched the car. When it became clear that the man was Christian and the author a martyr's widow, both were taken into custody at Ozghol police station in the Lavison district of Tehran. According to the author, she has not seen the man since, but claims that since her arrival in Sweden she has learned that he confessed under torture to adultery and was imprisoned and sentenced to death by stoning.

2.5 The author says that she was harshly questioned by the Zeinab sisters, the female equivalents of the Pasdaran who investigate women suspected of "un-Islamic behaviour", and was informed that her case had been transmitted to the Revolutionary Court. When it was discovered that the author was not only a martyr's widow but also the sighe wife of a powerful ayatollah, the Pasdaran contacted him. The author was taken to the ayatollah's home where she was severely beaten by him for five or six hours. After two days the author was allowed to leave and the ayatollah used his influence to stop the case being sent to the Revolutionary Court.

2.6 The author states that prior to these events she had, after certain difficulties obtained a visa to visit her sister-in-law in Sweden. The trip was to take place the day after she left the home of the ayatollah. According to the information submitted, the author had planned to continue from Sweden to Canada where she and her lover hoped to be able to emigrate since he had family there, including a son. She left Iran with her younger son on a valid passport and the visa previously obtained, without difficulty.

2.7 The author and her son arrived in Sweden on 23 December 1997 and applied for asylum on 29 December 1997. The Swedish Immigration Board rejected the author's asylum claim on 13 July 1998. On 29 October 1999, the Aliens Appeal Board dismissed her appeal.

2.8 The author submits that since her departure from Iran she has been sentenced to death by stoning for adultery. Her sister-in-law in Sweden has been contacted by the ayatollah who told

her that the author had been convicted. She was also told that the authorities had found films and photographs of the couple in the Christian man's apartment, which had been used as evidence.

2.9 The author draws the attention of the Committee to a report from the Swedish Embassy in Iran which states that chapter I of the Iranian hudud law "deals with adultery, including whoring, and incest, satisfactory evidence of which is a confession repeated four times or testimony by four righteous men with the alternative of three men and two women, all of whom must be eyewitnesses. Capital punishment follows in cases of incest and other specified cases, e.g. when the adulterer is a non-Muslim and the abused a Muslim woman. Stoning is called for when the adulterer is married". The report further underlines that even if these strict rules of evidence are not met, the author can still be sentenced to death under the criminal law, where the rules of evidence are more flexible.

2.10 The author further draws the attention of the Committee to documentation submitted to the Swedish immigration authorities to support her claim, including a certificate testifying to her status as the wife of a martyr. She also includes a medical certificate from Kungälvs Psychiatric Hospital indicating that she suffers from anxiety, insomnia, suicidal thoughts and a strong fear for her personal safety if she were returned to Iran. The certificate states that the author has symptoms of post-traumatic stress syndrome combined with clinical depression.

The complaint

3.1 The author claims that there exist substantial grounds to believe that she would be subjected to torture if she were returned to the Islamic Republic of Iran. Her forced return would therefore constitute a violation by Sweden of article 3 of the Convention. Furthermore, the author submits that there is a consistent pattern of gross human rights violations in the Islamic Republic of Iran, circumstances that should be taken into account when deciding on expulsion.

The State party's observations on admissibility and merits

4.1 In its submission of 24 January 2000, the State party submits that it is not aware of the present matter having been or being the object of any other procedure of international investigation or settlement. As to the admissibility of the communication, the State party further explains that according to the Swedish Aliens Act, the author may at any time lodge a new application for a residence permit with the Aliens Appeal Board, based on new factual circumstances which have not previously been examined. Finally, the State party contends that the communication is inadmissible as incompatible with the provisions of the Convention, and lacking the necessary substantiation.

4.2 As to the merits of the communication, the State party explains that when determining whether article 3 of the Convention applies, the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself determinative; and (b) the personal risk of the individual concerned of being subjected to torture in the country to which he/she would be returned.

4.3 The State party is aware of human rights violations taking place in the Islamic Republic of Iran, including extrajudicial and summary executions, disappearances, as well as widespread use of torture and other degrading treatment.

4.4 As regards its assessment of whether or not the author would be personally at risk of being subjected to torture if returned to the Islamic Republic of Iran, the State party draws the attention of the Committee to the fact that several of the provisions of the Swedish Aliens Act reflect the same principle as the one laid down in article 3, paragraph 1 of the Convention. The State party recalls the jurisprudence of the Committee according to which, for the purposes of article 3, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. The State party further refers to the Committee's general comment on the implementation of article 3 of the Convention which states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although the risk does not have to meet the test of being highly probable.

4.5 The State party recalls that the author of the present communication has not belonged to any political organization and has not been politically active in her home country. The author asserts that she has been sentenced to stoning by a Revolutionary Court in the Islamic Republic of Iran, a judgement which she maintains would be enforced if she were to be sent back there. The State party states that it relies on the evaluation of the facts and evidence and the assessment of the author's credibility made by the Swedish Immigration Board and the Aliens Appeal Board upon their examination of the author's claim.

4.6 In its decision of 13 July 1998, the Swedish Immigration Board noted that apart from giving the names of her sighe husband and her Christian friend, the author had in several respects failed to submit verifiable information such as telephone numbers, addresses and names of her Christian friend's family members. The Immigration Board found it unlikely that the author claimed to have no knowledge of her Christian friend's exact home address and noted in this context that the author did not even want to submit her own home address in the Islamic Republic of Iran.

4.7 The Immigration Board further noted that the author during the initial inquiry had stated that a Pasdaran friend had given her photographs of people in the Evin prison who had been tortured, which she had requested "out of curiosity" and which she gave to her Christian friend although she "didn't know" what he wanted them for. The Immigration Board judged that the information provided by the author in relation to this incident lacked credibility and seemed tailored so as not to reveal verifiable details.

4.8 Finally, the Immigration Board questioned the credibility of the author's account of her marriage to the ayatollah, her relationship with the Christian man and the problems that had emerged as a result of it.

4.9 In its decision of 29 October 1999, the Aliens Appeal Board agreed with the assessment of the Immigration Board. The Board further referred to the travaux préparatoires

application for asylum on her own statements only and that she had not submitted any written evidence in support of her claim, despite the fact that she had been told of the importance of doing so.

4.10 In addition to the decisions of the Immigration Board and the Aliens Appeal Board, the State party refers to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, according to which "the applicant should: (i) (t)ell the truth and assist the examiner to the full in establishing the facts of his case, [and] (ii) (m)ake an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence. If necessary he must make an effort to procure additional evidence". According to the UNHCR Handbook, the applicant should be given the benefit of the doubt, but only when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility.

4.11 In the present case, the State party first reminds the Committee that the author has refused to provide verifiable information and that her reasons for doing so, i.e. that she was forbidden by her friend to do so and that new tenants are now occupying her apartment in Tehran, are not plausible.

4.12 Second, the State party maintains that it seems unlikely that the author, solely out of curiosity, would want to have photographs of tortured people in her possession. It seems even more unlikely that she would hand over such photographs to someone she had known only for a few months. Further, the State party notes that although the author claims that the authorities in the Islamic Republic of Iran are in possession of a film showing her last meeting with her friend, no additional information has been provided by the author on this issue.

4.13 A third reason for doubting the author's credibility is that the author has not submitted any judgement or other evidence to support her claim that she has been sentenced for adultery by a Revolutionary Court. In addition, the author has not given any explanation as to why her sister-in-law was not able to obtain a copy of the Revolutionary Court's judgement when she visited the Islamic Republic of Iran. Further, the State party notes that according to information available to it, the Revolutionary Courts in the Islamic Republic of Iran have jurisdiction over political and religious crimes, but not over crimes such as adultery. Hudud crimes, i.e. crimes against God, including adultery, are dealt with by ordinary courts.

4.14 The State party further draws to the attention of the Committee that the author left Tehran without any problems only a few days after the incident which allegedly led to her detention, which would indicate that she was of no interest to the Islamic Republic of Iranian authorities at the moment of her departure. In addition, the author has claimed that she handed over her passport to her brother-in-law upon arrival in Sweden. However, the State party notes that her passport number is indicated on her asylum application which she submitted six days later. The explanation for this given by the author's counsel during the national asylum procedure, i.e. that the number might have been available from an earlier visit in Sweden by the author in 1996, is unlikely. There is nothing in the author's file that indicates that documents concerning her earlier visit to Sweden were available during the asylum application procedure.

4.15 The State party also draws the Committee's attention to the fact that the author has not cited any medical report in support of her statement that she was severely beaten by Ayatollah Rahimian only a few days before her arrival in Sweden. In addition, according to information received by the State party, the head of the Bonyad-e Shahid was, until April 1999, Hojatolleslam Mohammad Rahimian, but he does not hold the title of ayatollah.

4.16 Finally, the State party adds that when the author's sister-in-law applied for asylum in Sweden in 1987, she stated that her brother, the author's late husband, had died in a flying accident in 1981 caused by a technical fault. Ten years later, the author's brother-in-law and his family also applied for asylum and claimed that the author's husband had been killed for being critical of the regime and that he and his family would therefore be in danger of persecution if returned to the Islamic Republic of Iran. The brother-in-law and his family were returned to that country in November 1999 and the State party submits that it has not received any information indicating that they have been mistreated.

4.17 On the basis of the above, the State party maintains that the author's credibility can be questioned, that she has not presented any evidence in support of her claim and that she should therefore not be given the benefit of the doubt. In conclusion, the State party considers that the enforcement of the expulsion order to the Islamic Republic of Iran would, under the present circumstances, not constitute a violation of article 3 of the Convention.

Counsel's comments

5.1 In her submissions dated 4 February and 6 March 2000, counsel disputes the arguments of the State party regarding the failure of the author to submit written evidence. Counsel states that the author has provided the only written evidence she could possibly obtain, i.e. her identity papers and documentation showing that she is the widow of a martyr. Counsel states that the ayatollah conducted the sighe or mutah wedding himself with no witnesses or written contract. As to her failure to provide the immigration authorities with a written court verdict, counsel submits that the author only has second-hand information about the verdict, as it was passed after her departure from the Islamic Republic of Iran. She cannot, therefore, submit a written verdict. Counsel further disputes that the author's sister-in-law should have been able to obtain a copy of the verdict while visiting the Islamic Republic of Iran. She further states that the author's sister-in-law long ago ended all contacts with the author because she strongly resents the fact that the author has had a relationship with any man after the death of her husband.

5.2 Counsel acknowledges that crimes such as adultery are handled by ordinary courts. However, she draws the attention of the Committee to the fact that the jurisdictional rules are not as strict in the Islamic Republic of Iran as for example in the State party and that the prosecuting judge can choose the court. In addition, for a martyr's widow to ride alone with a Christian man in his car would probably fall under the heading of "un-Islamic behaviour" and as such come under the jurisdiction of the Revolutionary Court. Even if this were not the case, counsel reminds the Committee that the author has only been informed that she has been sentenced to death by stoning by a court. Not being a lawyer, and in view of what she was told during her

5.3 Counsel states that the author has given credible explanations for not being able or not wishing to provide the Swedish authorities with certain addresses and telephone numbers. Firstly, she had promised for the sake of security not to give her lover's telephone number to anyone and does not wish to break her promise even at the request of the immigration authorities. The Christian man always contacted the author on her mobile phone which he had given her for that purpose alone. The author left the mobile phone in the Islamic Republic of Iran when she departed and as she never called her number herself or gave it to anyone, she cannot remember it. Further, counsel states that the address which is indicated on the author's visa application used to be her home address, but the author has repeatedly explained that new tenants are now living there and that she does not want to subject them to any difficulties caused by inquiries from the Swedish authorities. Finally, counsel stresses that the author has given detailed information about the neighbourhood, Aghdasiye, where her lover lived and that she has repeatedly underlined that she never knew the exact address since she always went to her secret meetings first by taxi to Meydon-e-Nobonyad where she was picked up by a car that brought her to the Christian man's home. Finally, all the author ever knew about the Christian man's relatives was that he had one sister and one brother living in the United Kingdom and a son from a previous marriage living in Canada. She never met them and never asked their names.

5.4 Counsel underlines that the fact that the Swedish authorities do not find the author's explanations credible is a result of speculation based on the supposition that all people behave and think according to Swedish or Western standards. The authorities do not take into account the prevailing cautiousness in the Islamic Republic of Iran with respect to giving personal information, particularly to public officials.

5.5 With reference to the photographs of victims of torture which the author claims to have handed over to her lover, counsel submits that this fact in no way diminishes the author's credibility. The couple were engaged in a serious relationship and intended to marry and there was no reason for the author not to pass on such photos to a man in whom she had total confidence. Further, counsel underlines that the author has never argued that her handling of the photographs in question supports or has anything to do with her asylum claim.

5.6 Counsel notes that the State party observes that the author has not cited any medical certificate attesting to injuries resulting from the beatings she was subjected to by her sighe husband. Counsel reminds the Committee that the author left the Islamic Republic of Iran the following day and that her main preoccupation was to arrive safely in Sweden. Counsel further states that most Iranian women are used to violence by men and they do not or cannot expect the legal system to protect them, despite the positive changes which have recently taken place in the Islamic Republic of Iran in this respect. As an example, counsel states that an Iranian woman wishing to report a rape must be examined by the courts' own doctors as certificates by general doctors are not accepted by courts.

5.7 With reference to the fact that the author's passport number was given in her asylum application although she had claimed to have disposed of her passport upon arrival in Sweden, counsel states that there is no indication on the asylum application that the author's passport has been seized by the Immigration Board officer, which is the rule in order to secure enforcement of

necessary details having appeared on a computer screen. This information has been corroborated by the Immigration Board registration officer who received the author's asylum application and who told counsel that, in recent years, a person granted a tourist visa is registered in a computer database, containing all available information, including passport numbers. The author had been granted a tourist visa for Sweden twice in recent years, so her account was absolutely correct.

5.8 Counsel notes that the State party has confirmed that the author's sighe husband was the head of the Bonyad-e Shahid, which should support the author's claim; he was generally referred to as "Ayatollah", even though his title was Hojatolleslam. Counsel reminds the Committee that there are only some 10 real ayatollahs in the Islamic Republic of Iran. The great majority of mullahs are of the rank of hojatolleslam. However, mullahs who have gained power, particularly political power, are often referred to as Ayatollah out of courtesy, an illustrative example being Ayatollah Khamenei whose office demanded the rank of an ayatollah but who was in fact only hojatolleslam when he was appointed.

5.9 With reference to the State party's argument that the author left the Islamic Republic of Iran without difficulty, counsel points out that this is consistent with the author's version of the events leading to her flight. She has maintained that at the time of her departure she was not yet of interest to the Iranian authorities since her sighe husband had suppressed the Pasdaran report to the Revolutionary Court.

5.10 Finally, counsel states that what the author's dead husband's relatives have stated about the circumstances surrounding his death has no impact on the author's case or her credibility. It should be noted that the author herself has never stated that her husband was assassinated by the regime, but only that she had doubts about the circumstances pertaining to his death.

5.11 In support of counsel's arguments she submits a medical certificate dated 22 November 1999 from a senior psychiatrist at Sahlgrenska Hospital, where the author was taken after an attempted suicide. The attempt was made after the Swedish police had taken her and her son from a reception centre for asylum-seekers to a detention centre to ensure the execution of her expulsion. The diagnosis made was deep depression combined with contemplation of suicide.

5.12 Counsel further encloses a letter dated 27 December 1999 from the leading Swedish expert on Islam, Professor Jan Hjärpe, who confirms the author's account concerning the institution of sighe or mutah marriages and the legal sanctions provided for in cases of adultery.

5.13 Counsel draws the attention of the Committee to the fact that the immigration authorities in examining the author's case have not considered the situation of women in the Islamic Republic of Iran, existing legislation and its application, or the values of the Iranian society. Counsel states that the argumentation of the authorities, based almost exclusively on the author's failure to submit certain verifiable information, seems to be a pretext for refusing the author's application. In conclusion, counsel submits that according to the information provided by the author, there exist substantial grounds to believe that the author would be subjected to torture if returned to the Islamic Republic of Iran and that the author has provided reasonable explanations

Additional comments submitted by the State party

6.1 In its submission dated 2 May 2000, the State party contends that the Swedish Immigration Board and the Aliens Appeal Board have ensured a thorough investigation of the author's case. It reminds the Committee that during the asylum procedure, the author has been repeatedly reminded of the importance of submitting verifiable information, but that she has chosen not to do so. The State party does not find the explanations given hereto convincing, reiterates that the burden of proof in principle rests with the author and maintains that the author's credibility can be questioned.

6.2 Finally, the State party draws the attention of the Committee to the fact that the author first alleged that she had been sentenced to death for adultery during an initial interview held with her in May 1998. The State party submits that the author thus has had ample time to present a written judgement or other evidence to support that claim.

Additional information from the State party and counsel, requested by the Committee

7.1 Having taken note of the submissions made by both the author and the State party regarding the merits of the case, the Committee, on 19 and 20 June 2000, requested further information from the two parties.

Submissions by counsel

7.2 In her submission of 1 September 2000, counsel confirms previous information given regarding: (a) the nature of sighe or mutah marriages and the fact that witnesses are not necessary, nor registration before a judge if the partners themselves are capable of conducting the ceremony correctly; (b) the activities of Bonyad-e Shahid, affirming that martyrs' widows are presented, in listings and photo albums, for temporary marriages to its employees and directors. Counsel supports the information given with letters from, inter alia, the Association of Iranian Political Prisoners in Exile (AIPP), the Support Committee for Women in the Islamic Republic of Iran and Professor Said Mahmoodi, Professor of International Law at the University of Stockholm.

7.3 With regard to the alleged death sentence against the author, counsel submits that despite attempts by AIPP, it has not been possible to find any evidence that the author's Christian lover had been imprisoned and that they both have been sentenced to death by stoning for adultery. AIPP, as well as other sources, maintain that such information is not possible to get if the prison, the court or the case numbers is not known.

7.4 Counsel submits letters and information given by experts in Islamic law confirming that a sighe wife is bound by the rules regarding adultery and that she is prohibited from having a sexual relationship with any man other than her sighe husband. Adultery with a Christian man bears the sanction of stoning to death. Counsel further submits that the law in theory requires either four righteous witnesses or a confession to the sexual act for stoning to be ordered, but that

the author's sighe husband, being a powerful man in society, would not have difficulties finding persons willing to testify. According to international human rights organizations, the eyewitness condition is rarely respected and stoning for adultery is still frequently practised in the Islamic Republic of Iran, despite recent reforms in the country.

7.5 Reference and further clarifications were made with regard to telephone calls received by the author's sister-in-law (see para. 2.8). The author's previous lawyer had told Swedish authorities that the sister-in-law in Sweden had been contacted by Hojatolleslam Rahimian who told her that the author had been found guilty. Counsel has since been in contact with the sister-in-law directly and states that the correct version of events was that the sister-in-law, shortly after the author's arrival in Sweden, was contacted by a man in rage who did not give his name but wanted to know the author's whereabouts in Sweden. The man was aggressive and knew all the details of the author's past and said that she had no right to leave the Islamic Republic of Iran. The sister-in-law further states that she never attempted to verify the existence of a court judgement when she visited the Islamic Republic of Iran.

7.6 With reference to the Committee's request for additional information, counsel states that the author's older son, born in 1980, tried to seek asylum in Sweden from Denmark in March 2000. In accordance with the Dublin Convention, after a short interview, he was sent back to Denmark where he is still waiting to be interrogated by Danish immigration authorities. Since his case had not yet been examined by the Danish authorities, counsel requested Amnesty International to interview him.

7.7 The records of the interview confirm statements made by the author regarding her sighe marriage and of her being called to the Bonyad-e Shahid office several times a week. The son also states that when his mother left she had told him that he had to leave school and hide with close relatives of hers in Baghistan. He received private teaching to become a veterinary surgeon and subsequently enrolled in university. On 25 January 2000 he was summoned to the university information office by the intelligence service, Harasar, from where two men took him to the Bonyad-e Shahid office in Tehran where he was detained, interrogated, threatened and beaten. He claims that the interrogators wanted to know his mother's whereabouts and that they threatened to keep him and beat him until his mother came "crawling on all fours" and then they would "carry out her sentence". The author's son claims that it was during the interrogation that he fully realized his mother's situation, although he had not spoken to her since she left the country.

7.8 In conclusion, counsel maintains that although it has not been possible to obtain direct written evidence, for the reasons given above, the chain of circumstantial evidence is of such a nature that there can be no reason to doubt the author's credibility. Reference is further made to a recent judgement of the European Court of Human Rights dated 11 July 2000, regarding an Iranian woman asylum-seeker who allegedly had committed adultery and who feared death by stoning, whipping or flogging if returned. As in the case of the author no written evidence existed in the form of a court judgement, but the Court stated that it "is not persuaded that the situation in the applicant's country of origin has evolved to the extent that adulterous behaviour is no longer considered a reprehensible affront to Islamic law. It has taken judicial notice of

recent surveys of the current situation in the Islamic Republic of Iran and notes that punishment of adultery by stoning still remains on the statute book and may be resorted to by authorities."[1] The Court ruled that to expel the applicant would be a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Submissions by the State party

7.9 The State party made additional submissions on 19 September and 19 October 2000. With reference to the Committee's request for additional information, the State party reiterates its view that the burden is on the author to present an arguable case. It maintains that the author has not given any evidence in support of her claim and therefore there are serious reasons to doubt the veracity of those claims.

7.10 With regard to the author's alleged sighe marriage, the State party confirms that the law in the Islamic Republic of Iran allows for such temporary forms of marriage. It further argues that although sighe marriages are not recorded on identification documents, such contracts should, according to reliable sources, contain a precise statement of the time-period involved and be registered by a competent authority. In practice, a religious authority may approve the marriage and issue a certificate. Given that the author claims that her sighe or mutah marriage was conducted by Hojatolleslam Rahimian himself and that no contract was signed, the State party has doubts as to whether the author entered into a legally valid marriage.

7.11 The State party points out that counsel in her last submissions to the Committee has included certificates and other information which have not previously been presented to the Swedish immigration authorities. As the new information seems to be invoked in order to prove the existence of sighe marriages in the Islamic Republic of Iran, the State party emphasizes that it does not question this fact, nor the existence of the Bonyad-e Shahid, but, inter alia, the author's credibility in respect of her personal claims of having entered in such a marriage. The author's credibility is further diminished by the inconsistent information given relating to phone calls received by the author's sister-in-law.

7.12 In addition, even if the Committee does accept that the author has entered into such a marriage, the State party asserts that this in itself would not constitute substantial grounds for believing that the author would be in danger of being tortured or killed if returned to the Islamic Republic of Iran.

7.13 It is further submitted that according to the Swedish Embassy in Tehran, it is not possible for the Embassy to inquire whether a competent family court, rather than the Revolutionary Court, has issued a judgement regarding the author. However, the author should, according to the Embassy, by proxy be able to obtain a copy of the judgement if it exists, or at least obtain the name of the court and the case number. The State party further submits that only a married person can be convicted of adultery; it therefore seems unlikely that the author's lover would have been sentenced to death as claimed.

7.14 In addition, the State party claims that neither reports from the United States Department of State nor from Amnesty International confirm the assertion by counsel that stoning is

7.15 With regard to the judgement by the European Court referred to by counsel, the State party points out that in that case the applicant had been granted refugee status by UNHCR and the European Court had relied on UNHCR's conclusions as to the credibility of the applicant and the veracity of her account. In the present case, two competent national authorities have scrutinized the author's case and found it not to be credible.

7.16 Finally, with regard to the information given by the author's son, currently residing in Denmark where he is seeking asylum, the State party underlines that this information is new and has not been presented to the national authorities. According to the State party, information submitted at a very late stage of the proceedings should be treated with the greatest caution. It further emphasizes a number of contradictory points in the newly submitted evidence: (a) during the son's interrogation by the Swedish Board of Immigration no mention was made of any court judgement or death sentence, information which, in the State party's view, would have been relevant in the circumstances; (b) the son gave contradictory answers to the question of whether he possessed a passport. The State party also finds it unlikely that the author was not aware of, and has never invoked, the harassment to which her son was allegedly subjected after her departure from the Islamic Republic of Iran.

Issues and proceedings before the Committee

8.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee is further of the opinion that all available domestic remedies have been exhausted. The Committee finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds immediately with the considerations of those merits.

8.2 The issue before the Committee is whether the forced return of the author to the Islamic Republic of Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to the Islamic Republic of Iran. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his

return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.4 From the information submitted by the author, the Committee notes that she is the widow of a martyr and as such supported and supervised by the Bonyad-e Shahid Committee of Martyrs. It is also noted that the author claims that she was forced into a sighe or mutah marriage and to have committed and been sentenced to stoning for adultery. Although treating the recent testimony of the author's son, seeking asylum in Denmark, with utmost caution, the Committee is nevertheless of the view that the information given further corroborates the account given by the author.

8.5 The Committee notes that the State party questions the author's credibility primarily because of her failure to submit verifiable information and refers in this context to international standards, i.e. the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, according to which an asylum-seeker has an obligation to make an effort to support his/her statements by any available evidence and to give a satisfactory explanation for any lack of evidence.

8.6 The Committee draws the attention of the parties to its general comment on the implementation of article 3 of the Convention in the context of article 22, adopted on 21 November 1997, according to which the burden to present an arguable case is on the author of a communication. The Committee notes the State party's position that the author has not fulfilled her obligation to submit the verifiable information that would enable her to enjoy the benefit of the doubt. However, the Committee is of the view that the author has submitted sufficient details regarding her sighe or mutah marriage and alleged arrest, such as names of persons, their positions, dates, addresses, name of police station, etc., that could have, and to a certain extent have been, verified by the Swedish immigration authorities, to shift the burden of proof. In this context the Committee is of the view that the State party has not made sufficient efforts to determine whether there are substantial grounds for believing that the author would be in danger of being subjected to torture.

8.7 The State party does not dispute that gross, flagrant or mass violations of human rights have been committed in the Islamic Republic of Iran. The Committee notes, inter alia, the report of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran (E/CN.4/2000/35) of 18 January 2000, which indicates that although significant progress is being made in that country with regard to the status of women in sectors like education and training, "little progress is being made with regard to remaining systematic barriers to equality" and for "the removal of patriarchal attitudes in society". It is further noted that the report, and numerous reports of non-governmental organizations, confirm that married women have recently been sentenced to death by stoning for adultery.

9. Considering that the author's account of events is consistent with the Committee's knowledge about the present human rights situation in the Islamic Republic of Iran, and that the

prevailing circumstances, the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to the Islamic Republic of Iran or to any other country where she runs a risk of being expelled or returned to the Islamic Republic of Iran.

10. Pursuant to rule 111, paragraph 5, of its rules of procedure, the Committee would wish to receive, within 90 days, information on any relevant measures taken by the State party in accordance with the Committee's present views.

Note

[1] Jabari v. Turkey (para. 40), European Court of Human Rights, 11 July 2000.

Communication No. 150/1999

Submitted by :	S.L. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	5 November 1999

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 May 2001,

Having concluded its consideration of communication No. 150/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The author of the communication is Mr. S.L., an Iranian citizen currently residing in Sweden, where he is seeking refugee status. The author arrived in Sweden on 8 February 1998 and applied for asylum the following day. Mr. S.L. claims that he would risk torture upon return to the Islamic Republic of Iran and that his forced return to that country would therefore constitute a violation by Sweden of article 3 of the Convention. The author is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted communication No. 150/1999 to the State party on 18 November 1999. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the author to the Islamic Republic of Iran pending the consideration of his case by the Committee. In a submission dated 21 December 1999 the State party informed the Committee that the author would not be expelled to his country of origin while his communication was under consideration by the Committee.

The facts as submitted by the author

2.1 According to the author, he has never been politically active in the Islamic Republic of Iran. He was a respected Muslim of firm conviction who studied agronomics at Tehran University and who was financially well off from his own poultry farming business. In December 1988, having left university after a few years of study, the author was drafted and was

2.2 The author explains that in the early 1990s the Pasdaran (Iranian Revolutionary Guards) and the police were joined together, coming under the Ministry of the Interior. At the same time, a new security force body, the Sepah-Pasdaran, was created directly under the Supreme Commander, Ayatollah Khamenei, with the task to "protect the system, defend the values of Islam and the revolution". There are also counter-intelligence units within the Sepah-Pasdaran with responsibility for internal control and surveillance of the rest of the Sepah-Pasdaran. The author was placed in the Tehran office of one of these units, where he soon gained everyone's confidence and was appointed personal secretary to the commander of the office. As such he had access to all files and all cupboards, except one to which only the commander had the keys.

2.3 One day, the commander accidentally left his keys in the office when he left for a meeting. Out of curiosity, the author opened the "special cupboard" and found personal files containing information about immoral and criminal acts committed by well-known, highly respected individuals considered, not least by the author, as pillars of society. In his submission to the Committee, the author gives detailed information, including names of the individuals concerned and the nature of the crimes supposedly committed, including rape, illegal trade in arms, drug dealing and embezzlement.

2.4 The author took copies of the files and hid them in his home. He thought that if the allegations were forwarded to the right quarters, the individuals in question would be investigated, sentenced and punished properly. In February/March 1990, the author gave anonymous information to the Sepah-Pasdaran operational group, which resulted in a raid and the discovery of illegal weapons and ammunition. The author continued to submit anonymous information to the operational group which resulted in further raids. However, due to the influential status of the individuals involved, the discoveries were covered up and no arrests were made. Convinced that the allegations were true, the author also sent copies of the files to the office of Ayatollah Khamenei.

2.5 According to the author, the Sepah-Pasdaran must have become suspicious of him, because in April/May 1991, shortly after having finished his military service, the author was arrested and held in one of Sepah-Pasdaran's secret prisons, the so called "No. 59", for six months. According to one of the medical statements supporting the author's claim, the author was subjected to torture and ill-treatment. He was handcuffed behind his knees, and with a stick placed between his upper arms and thighs he was hung up to rotate, sometimes for hours. The author also claims that he received beatings with batons on the kneecaps and elbows. Although he was interrogated about the secret reports, the author denied everything, knowing that a confession would be the end of him. After six months, in November/December 1991, the author was transferred to a hospital for medical treatment and thereafter released on bail.

2.6 The author claims that after his release he was kept under close surveillance by the Sepah-Pasdaran. He was eventually asked to spy for the Sepah-Pasdaran on some of the leaders of the State-controlled farmers' cooperative in which he was active. He was also supposed to go with the cooperative to international fairs and report on the leaders' behaviour and contacts abroad and for this purpose the author had a passport issued. The author tried to keep the Sepah-Pasdaran satisfied by providing some information, but of limited interest. In August 1995, the Sepah-Pasdaran arrested him again and he was first brought to the Evin prison.

The author had to leave samples of his handwriting, presumably to compare it with the writing on one of the envelopes in which he had sent anonymous information. According to the allegations, the author was again tortured and kept in solitary confinement for several months.

2.7 In June 1996 the author was brought to trial, convicted and sentenced to one year's imprisonment and a fine for check fraud, a verdict which the author presented to the Swedish immigration authorities. According to the author, the charges were fabricated. He was not represented by a lawyer during the trial and did not know any of the alleged plaintiffs. After the verdict, the author was transferred to Qasar prison, where he claims that conditions improved and although he was subjected to ill-treatment he was never tortured.

2.8 The author claims that he escaped from prison on 22 June 1997. His wife and a number of close friends arranged the flight, by reporting him to the prosecutor on false grounds. As a consequence the author was summoned and transported, together with two other prisoners, to the court in Kosh district, accompanied by two police officers and three soldiers. The guards were bribed by the author's wife and friends to allow him to escape.

2.9 After his escape, the author remained in hiding with friends in Karach. An influential friend of the author's family, with business contacts in Germany, arranged for the author to receive a tourist visa. The author already had a passport which he had been issued in 1991 (see para. 2.6). With the help of a smuggler the author left the Islamic Republic of Iran illegally via the Kurdish mountains to Turkey. From Ankara he went legally by air to Germany on his tourist visa and was thereafter taken by car to Sweden via Denmark.

2.10 The author entered Sweden on 8 February 1998 and applied for asylum the following day. The immigration authorities ordered his expulsion to Germany, in accordance with the Dublin Convention, but before the execution of the expulsion, the author escaped to Norway. From Norway he was returned to Sweden. He was again expelled from Sweden to Germany on 9 November 1998, but subsequently returned to Sweden due to the fact that he had been outside European Union territory since his initial arrival on German territory.

2.11 The Swedish Immigration Board rejected the author's asylum claim on 13 September 1999. The author's appeal was rejected by the Aliens Appeal Board on 4 November 1999.

The complaint

3.1 In view of his past experiences of imprisonment and torture, the author claims that there exist substantial grounds to believe that he would be subjected to torture if he were to be returned to the Islamic Republic of Iran. His forced return would therefore constitute a violation by Sweden of article 3 of the Convention.

3.2 In support of the claim, counsel provides several medical certificates. One of the certificates is from the Centre for Torture and Trauma Survivors in Stockholm, stating that the author suffers from a post-traumatic stress disorder and that both medical and psychological evidence indicate that the author has been subjected to torture with typical psychological effects as a result. In addition, a certificate from a psychiatrist states that the "circumstances, together

with [the author's] whole attitude and general appearance, indicate very strongly ... that he for a long time has been subjected to severe abuses and torture" and that the author is considered "completely trustworthy".

The State party's observations on admissibility and merits

4.1 By submission of 21 December 1999, the State party informs the Committee that, following the Committee's request under rule 108, paragraph 9, of its rules of procedure, the Swedish Immigration Board decided to stay the expulsion order against the author while his communication is under consideration by the Committee.

4.2 By submission of 2 March 2000, the State party informs the Committee that it does not raise any objection as to the admissibility of the communication. It confirms the author's account of the internal remedies exhausted.

4.3 With regard to the general situation of human rights in the Islamic Republic of Iran, the State party notes that although there are at present signs that Iranian society is undergoing changes that may entail improvements in the human rights field, the country is still reported to be a major abuser of human rights.

4.4 The State party further states that it refrains from making an evaluation of its own regarding whether or not the author has substantiated his claim that he would risk being tortured if expelled, and leaves it to the discretion of the Committee to determine whether the case reveals a violation of article 3 of the Convention. It notes that in its jurisprudence, the Committee has observed that past torture is one of the elements to be taken into account when examining a claim under article 3 of the Convention but that the aim of the Committee's examination is to determine whether the author would at present be at risk of being subjected to torture if returned. The State party does not wish to question that the author has spent some time in prison, nor that he was at that time subjected to ill-treatment. Without making an assessment of its own, the State party reminds the Committee of the opinions put forward by the Swedish Immigration Board and the Aliens Appeal Board.

4.5 The Swedish Immigration Board rejected the author's application for asylum on 13 September 1999, on the basis that the circumstances invoked by the author lacked credibility. The credibility of the author was questioned on the following grounds: (i) the fact that the author had not presented his Iranian passport or any other travel documents to the Swedish authorities; (ii) that the author had not applied for asylum either in Germany or in Denmark, indicating that he could not have regarded his situation in his home country as particularly serious; (iii) the Board found it difficult to believe that the Iranian security police wanted someone they were suspicious of to act as a spy for them; (iv) the circumstances regarding the author's escape from prison were not considered credible; and finally (v) the Board questioned the authenticity of the judgement regarding check fraud submitted by the author.

4.6 The Aliens Appeals Board dismissed the author's appeal on 4 November 1999. The Board found no reason to question the author's identity, nor did it question that the author had been sentenced by a court in Tehran for check fraud in accordance with the submitted judgement, which the Swedish Embassy in Tehran had had examined by legal experts who

concluded it was authentic. The Aliens Appeals Board does not rule out that the author had been deprived of his liberty while under suspicion for check fraud, nor that he had served a prison sentence for the said crime, or that he had been ill-treated during his imprisonment. In all other aspects, the Aliens Appeals Board questioned the credibility of the author on the same grounds as the Swedish Immigration Board and in the light of the submitted medical certificate which indicates that the author seems completely trustworthy.

4.7 The Swedish Embassy in Tehran further noted that check fraud cases are very common in the Islamic Republic of Iran and that at present there appears to be thousands of such cases pending before the courts in Tehran. The Embassy does not rule out the possibility that on the whole, the author has submitted reliable information in support of his reluctance to return to his country of origin. With regard to the author's passport, the Embassy states that the fact that a person has legal problems with the Iranian authorities does not necessarily mean that he is refused a passport, whereas he would normally not obtain an exit permit.

4.8 Finally, the State party points out that the author claims that the judgement concerning check fraud was presented to him in February or March 1996, after he had spent six months in prison. However, it appears from the judgement itself that it was given on 6 June 1996. The Aliens Appeals Board held the view that the author may have been found guilty of check fraud and served a prison sentence for that crime.

Counsel's comments

5.1 Counsel notes the immigration authorities' reference to the fact that the author had not presented his travel documents and that it therefore cannot be excluded that the author had destroyed his Iranian passport and that his exit from the Islamic Republic of Iran was legal. She further notes that the authorities do not find it credible that the author was issued a passport while under suspicion by the Iranian secret police. With regard to the first matter, counsel submits that rejection by the immigration authorities with the indication that the author may have destroyed his travel documents in bad faith is a common phrase automatically used to question the general veracity of a claim. With regard to the second, counsel reminds the Committee that the author has given a plausible explanation of why he was granted a passport despite being under surveillance (see para. 2.6).

5.2 With reference to the immigration authorities' argument that it does not seem likely that the secret police would use a person under surveillance to spy for them, counsel submits that it is common knowledge that in dictatorships the secret police do force persons over whom they have a hold to work for them in different ways.

5.3 Counsel notes the contradictions with regard to the Swedish Immigration Board's and the Aliens Appeals Board's argumentation concerning the judgement for check fraud presented by the author. One of the main reasons for the Immigration Board's doubts as to the credibility of the author was that it questioned the authenticity of the judgement. When it was ascertained, through the Swedish Embassy in Tehran, that the judgement was in fact authentic, the Aliens Appeals Board in turn used the authenticity of the document as an argument against the author, indicating that the author had been imprisoned for check fraud and had not been persecuted on political grounds. Counsel submits that the use of false charges in suppressive States in general,

and in the Islamic Republic of Iran in particular, is common to dispose of persons seen as a threat against the State and at the same time create an image of a legitimate rule of law. The Committee's attention is drawn to the fact that the author's account in this respect was considered not credible by the Aliens Appeals Board without giving any reason therefor. Counsel further points out that for the author, it was obvious that he had been judged on false charges, which was why he presented the verdict to the Swedish immigration authorities in the first place. No person would present a real verdict and expect to be granted asylum on that ground alone.

5.4 Counsel recalls that the Aliens Appeals Board does not question the fact that the author had been imprisoned in the Islamic Republic of Iran, nor that he was at that time subjected to torture and ill-treatment.

5.5 With regard to the author's escape, counsel points out that the author has given such a detailed description of the events that there should be no doubt about its veracity. Details were also given to the examining psychiatrist who in his medical certificate judged the author to be completely trustworthy.

5.6 The authorities question why the author did not apply for asylum in Germany if, as claimed, he feared persecution by the Iranian authorities. Counsel points out that the author has given a clear and plausible explanation of why he did not do so. The author would not have been able to get his passport renewed or a tourist visa for Germany if it had not been for a close and influential friend of the author's family with business contacts in Germany. The author was therefore determined not to seek asylum in Germany since doing so would likely compromise the friend. The author, like everyone else, was aware that immigration authorities in Germany and elsewhere take note of the sponsor of a person who seeks asylum after having been granted a tourist visa.

5.7 Finally, counsel points out that the transcripts of the one and only interrogation of the author by the Swedish immigration authorities is of poor quality. The interpretation and translation of the author's account are of a low standard and even the Swedish text is sometimes incomprehensible. According to the transcripts, the author did not seem to be allowed to tell his story and was constantly interrupted by provocative questions. The torture is not questioned. As an example of the poor translation, counsel points to an instance where "prosecutor" was replaced by "Chairman of the Court", thereby leading the Swedish Immigration Board initially to doubt the authenticity of the judgement.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee is further of the opinion that all available domestic remedies have been exhausted. The Committee finds that no further

obstacles to the admissibility of the communication exist. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to the Islamic Republic of Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Iran. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 The Committee has taken note of the arguments presented by the author and the State party and is of the opinion that it has not been given enough evidence by the author to conclude that the latter would run a personal, real and foreseeable risk of being tortured if returned to his country of origin.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the author of the communication has not substantiated his claim that he would be subjected to torture upon return to the Islamic Republic of Iran and therefore concludes that the author's removal to the Islamic Republic of Iran would not constitute a breach by the State party under article 3 of the Convention.

B. Decisions

Communication No. 160/2000

Submitted by: P.R. (name deleted)
[represented by counsel]

Alleged victim: The author

State party: Spain

Date of the communication: 9 February 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2000,

Adopts the following decision:

1. The author of the communication is Mr. P.R., a Spanish national who claims to be the victim of violations by Spain of articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel. The Committee transmitted the communication to the State party, in accordance with article 22, paragraph 3, of the Convention, on 11 April 2000.

The facts as submitted by the author

2.1 The author claims that on the night of 29 October 1997, at about 3 a.m., as he was walking with two companions in Victoria Street in Murcia, he approached two local police officers to ask whether they knew of a bar that was open so that they could buy a few drinks. When one of the officers replied that it was not a proper hour for drinking, the author turned to his companions and made a disrespectful remark about the police. The two policemen immediately bore down on the author, punching him and hitting him with their truncheons, knocking him down and continuing to beat him on the ground. Other local police officers were called to the scene by the first two and joined in the beating. They then handcuffed him in a very painful way and took him to the police station in Correos Street, from which he was later released. The injuries suffered by the author required medical attention at the Molina de Segura emergency unit.

2.2 On 31 October 1997, the author filed a complaint against the police officers with Investigating Court No. 1, which was on duty at the time, but no investigation was conducted.

2.3 The police officers who allegedly mounted the attack brought charges against the author that very day, 29 October 1997, accusing him of insulting officers of the law. In their charge, they claimed that at 4.55 a.m. the author of the communication had approached them to ask whether there were any bars open in the neighbourhood. The police officers had answered that

there were none open at that hour and the author had responded with insults. They had asked for identification but he had refused, insulting them again. They had thereupon placed the author, who had offered resistance, in the police vehicle and had driven him to the police station for identification.

2.4 Investigating Court No. 6 of Murcia, before which the charges were brought, instituted a minor-offence procedure and summoned the parties to the oral proceedings on 25 November 1997. During the proceedings, the author stated that he had filed a complaint against the police officers with the court on duty. The judge thereupon suspended the proceedings and, on 27 November, requested Investigating Court No. 1 to transmit the author's complaint on the grounds that it had jurisdiction to undertake the relevant investigation. The judge finally pronounced judgement on 17 March 1998. He characterized the language used by the author to the police officers as a minor insult to an officer of the law and sentenced him to a fine and payment of the costs of the proceedings. The judgement mentioned that the author and the proposed witnesses had not appeared before the court and stated in one paragraph that the author had claimed to have been assaulted on the way to the police station. It stated in another paragraph, however, that, since neither the Office of the Public Prosecutor nor the author or his representative had brought charges during the proceedings and since no evidence had been adduced in support of the complaint, the police officers should be acquitted.

2.5 The author appealed against the judgement to the Provincial High Court on 21 April 1998, requesting that the judgement should be set aside and that the facts he had reported to the court on duty should be investigated as a possible offence as defined in articles 173 to 177 of the Criminal Code under the heading "Torture and other offences against the person". The author argued that the investigation would have required the opening of preliminary proceedings and the taking of statements from the alleged perpetrators, the victim and the witnesses. He further argued that his alleged offence should have been tried together with the facts stated in his complaint, which were on no account prosecutable by a minor-offence procedure. Lastly, he claimed that the failure to investigate constituted a breach of article 12 of the Convention.

2.6 The Provincial High Court dismissed the appeal on 17 June 1998. According to the judgement, counsel for the author, at the oral proceedings on 25 November 1997, had merely requested that the complaint filed by his client should be joined to that before the court. The judge had acceded to that request, suspended the proceedings and set a new date for their resumption. The author had failed to appear for those proceedings without due reason. As he had thus failed to support his complaint at the appointed time, the judge had had no alternative but to reject it in the absence of evidence for the prosecution. The judgement concluded that the judicial proceedings had been terminated owing to the party's inaction.

2.7 The author rejects the arguments set forth in the judgement. He claims that he did attend the proceedings, although he arrived a few minutes late, and that the facts reported in his complaint should have been investigated automatically even if none of the parties had raised them in the proceedings, since they constituted circumstantial evidence of criminal conduct (a complaint having been filed and evidence submitted).

2.8 On 3 July 1998, the author filed an amparo application with the Constitutional Court, alleging violations of the following provisions: article 15 of the Constitution (right to physical integrity) and the corresponding articles of the Convention; the provision of article 24 of the Constitution concerning the right to an appropriate legal procedure, since the facts reported could not be dealt with in minor-offence proceedings but in ordinary criminal proceedings for more serious offences, which would not be prosecuted by an investigating judge; the provision of article 24 of the Constitution concerning the right to adversarial proceedings, since, despite the fact that the judgement by the Provincial High Court indicated that the Office of the Public Prosecutor objected to the appeal and requested confirmation of the initial judgement, the author had never been informed of the objection filed by the prosecutor and was thus denied the opportunity to challenge it; the jurisprudence of the Committee against Torture in respect of article 13 of the Convention.[1]

2.9 The Constitutional Court declared the appeal inadmissible in a resolution of 19 January 2000, stating, inter alia, that the contested judgements were constitutionally sound. It further stated that the author's procedural conduct had been the decisive factor because he had simply requested that his complaint against the officers of the Local Police should be joined to the subject matter of the proceedings, but without bringing charges against them. The author's claim that his right to physical integrity had been violated was therefore completely unfounded.

The complaint

3.1 The author claims that the facts amount to a violation by Spain of article 12 of the Convention because the judicial authorities failed to conduct a prompt and impartial investigation despite the fact that there were reasonable grounds to believe that acts of torture or ill-treatment had been committed. Neither the author nor the witnesses nor the doctor who had testified to the assault was questioned. Moreover, the procedure envisaged in domestic legislation for the crime of torture had not been followed.

3.2 The author does not share the view of the judicial authorities that it was his inaction that determined the outcome of the legal proceedings. He considers that there was a violation of article 13 of the Convention, according to which it is enough for the victim simply to bring the facts to the attention of an authority of the State. Article 13 does not require the formal lodging of a complaint (a step that had been taken in his case) or an express statement of intent to institute and sustain a criminal action arising from the offence.

The State party's observations concerning admissibility

4. In its statement of 8 June 2000, the State party notes that the author did not indicate at any stage that the procedure for serious offences was to be applied to his complaint. On the contrary, at the minor-offence proceedings his counsel requested that his complaint against the police should be joined thereto. That means that he consented to his case being dealt with in the context of minor-offence proceedings. Court No. 6 summoned the author to attend the minor-offence proceedings "as complainant and defendant". However, neither he nor his counsel turned up for the proceedings at which all the evidence and findings were to be presented. Responsibility for failure to support a complaint and to present a defence against charges

therefore lies with the person who failed to appear. Following his failure to attend, the author neither entered a plea nor submitted a document challenging the minor-offence procedure. It was only on appeal that the author complained, for the first time, of the failure to apply the procedure for serious offences to his complaint. But that charge was inconsistent with his previous conduct and was also untimely, since it was not filed in time or in due form, although the author had enjoyed the assistance of counsel from the outset. The communication should therefore be declared inadmissible on the ground of failure to exhaust domestic remedies.

The author's comments

5.1 The author reiterates the fact that there was never a prompt, serious and impartial investigation as required by the Convention, although he had lodged a complaint with the judicial authorities together with a medical report confirming that he had received multiple blows and bruises. He explains that the Spanish Criminal Code makes clear distinctions in its definitions between the serious offence of torture (art. 174) and the minor offence of assault (art. 617). In particular, the offence of torture is punishable by a prison term of two to six years and disqualification of the official for two to four years, while the offence of assault is punishable only by detention for three to six weekends or a fine. According to the author, for the purposes of the Convention the serious, prompt and impartial investigation required should be conducted in respect of the offence of torture and not that of assault. Otherwise, the protection against torture that the Convention seeks to guarantee would be ineffective. He also notes that the procedure for serious offences is different from that for minor offences. In the former case, the investigation is carried out by investigating judges and the prosecution by criminal courts or provincial high courts, while cases involving minor offences are decided by the investigating judges themselves.

5.2 The author further states that the judgement of the Provincial High Court completely disregarded the Convention despite the fact that he had invoked it in his appeal. Moreover, the argument on which the judgement is based is incompatible with the Convention, which does not require the investigation to be conducted by the victim himself, especially when he has submitted a complaint, a document which, according to the Committee's jurisprudence, is not even necessary for the conduct of a prompt and impartial investigation. Lastly, the author contests the State party's argument about the untimeliness of the complaint, claiming that the appeal was an appropriate means of remedying the lack of a serious, prompt and impartial investigation. The Provincial High Court demonstrated a lack of impartiality by distorting the legal framework applicable to a criminal act which the organs of State are required ex officio to prosecute. The author concludes that all available legal remedies have been exhausted, including the amparo application to the Constitutional Court.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in the communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has objected to admissibility on the grounds of failure to exhaust domestic remedies.

6.2 It is a fact undisputed by the author of the communication that, at the hearing on 25 November 1997 of oral minor-offence proceedings in Investigating Court No. 6 in Murcia, before which the complaint against him had been lodged by the police officers on 29 October 1997, it was his own lawyer who requested the suspension of the proceedings on the ground of the existence of the complaint lodged by his client against the police officers. That complaint had been lodged before Murcia Investigating Court No. 1, which had been on duty on the day it had been lodged, namely 31 October 1997. In addition, he had requested "the relevant joinder". Consequently, the joinder of the author's complaint against the police officers to that lodged by the officers against the author, which was being dealt with in oral minor-offence proceedings, was expressly requested by the author.

6.3 Between the suspended hearing of 25 November 1997 and the new hearing for the continuation of the proceedings, convened by decision of 12 December 1997 for 17 March 1998, the author, who could not have been unaware of the fact that the proceedings were continuing in accordance with the oral minor-offence procedure, did not, although he could have done so, apply for the replacement of that procedure by the ordinary criminal procedure, which he is now invoking as a basis for the communication submitted to the Committee.

7. In the light of the foregoing, the Committee, in accordance with the provisions of rule 107, paragraph 1 (c), of its rules of procedure, declares the communication inadmissible as constituting an abuse of the right to submit a communication under article 22 of the Convention.

8. This decision shall be transmitted to the State party and to the author of the communication.

Notes

[1] The author cites the Committee's views on communication No. 59/1996 (Blanco Abad v. Spain), which states in paragraph 8.6: "The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention." (See Official Records of the General Assembly, Fifty-third session, Supplement No. 44 (A/53/44, annex X), Report of the Committee against Torture.)

Annex VIII

Oral statement delivered by the secretariat regarding the financial implications of establishing a pre-sessional working group

1. This oral statement is made in accordance with rule 25 of the rules of procedure of the Committee against Torture.

2. It will be recalled that, at its 437th meeting, held on 18 May 2000, the Committee against Torture agreed that the establishment of a pre-sessional working group would facilitate its monitoring activities, in particular its consideration of individual communications received under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As indicated in paragraph 20 of its annual report, contained in document A/55/44, the Committee agreed to pursue this matter at its twenty-fifth session currently under way.

3. Should the Committee at its current session decide to pursue the establishment of the above-mentioned pre-sessional working group as from the biennium 2002-2003, this would entail: (i) the convening of a five-day session of the working group, preceding each session of the Committee, with interpretation provided in two working languages; (ii) a conference room with full facilities; (iii) a maximum of 30 pages of in-session documentation for each session; and (iv) the payment of daily subsistence allowance of four members of the Committee for a period of seven days per session.

4. A preliminary estimate of the above-mentioned requirements at full cost amounts to US$ 178,900 for the whole biennium, the breakdown of which is as follows:

	in US$
Section 2	
Total conference servicing costs of four sessions of the working group (five working days each)	154 300
Section 22	
28 days' daily subsistence of four Committee members	24 600
Grand total	178 900

5. The estimates for conference services are based on a theoretical assumption that it would not be possible to provide the services required by the Committee from the existing conference capacity of the Organization. However, it should be noted that the extent to which the Organization's permanent capacity would need to be supplemented by temporary assistance resources can be determined only in the light of the calendar of conferences and meetings for the biennium 2002-2003. The proposed budget for that biennium is currently under preparation and will include provisions for conference services reflecting the pattern of meetings and conferences

held in past years. As a result, it is not anticipated that the decision by the Committee would require additional resources in the proposed programme budget for the biennium 2002-2003.

6. The decision to recommend the establishment of the pre-sessional working group would entail additional resources under section 22, Human rights, estimated at US$ 24,600 for the biennium 2002-2003 for the payment of daily subsistence allowance to the members of the pre-sessional working group of the Committee.

Annex IX

List of documents for general distribution issued during the reporting period

A. Twenty-fifth session

Symbol	Title
CAT/C/17/Add.22	Second periodic report of Cameroon
CAT/C/25/Add.11	Second periodic report of Australia
CAT/C/34/Add.12	Initial report of Belarus
CAT/C/34/Add.13	Initial report of Canada
CAT/C/43/Add.3	Third periodic report of Armenia
CAT/C/49/Add.2	Third periodic report of Guatemala
CAT/C/57	Provisional agenda and annotations
CAT/C/SR.439-456/Add.1	Summary records of the twenty-fifth session of the Committee

B. Twenty-sixth session

Symbol	Title
CAT/C/9/Add.16	Initial report of Brazil
CAT/C/24/Add.6	Initial report of Slovakia
CAT/C/24/Add.7	Initial report of Costa Rica
CAT/C/38/Add.1	Second periodic report of the Czech Republic
CAT/C/39/Add.3	Third periodic report of Greece
CAT/C/47/Add.1	Initial report of Kazakhstan
CAT/C/48/Add.1	Second periodic report of Georgia
CAT/C/52/Add.1	Initial report of Bolivia
CAT/C/58	Note by the Secretary-General listing initial reports due in 2001
CAT/C/59	Note by the Secretary-General listing second periodic reports due in 2001
CAT/C/60	Note by the Secretary-General listing third periodic reports due in 2001
CAT/C/61	Note by the Secretary-General listing fourth periodic reports due in 2001
CAT/C/62	Provisional agenda and annotations
CAT/C/SR.457-484	Summary records of the twenty-sixth session of the Committee

Annex X

Contribution of the Committee against Torture to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

The Committee against Torture,

Recalling that article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates, in its definition of torture, that discrimination is one of the prohibited purposes of an act of torture. The Convention states:

> "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Recalling that, in the course of its review of State party reports on compliance with the provisions of the Convention, the Committee against Torture has repeatedly expressed concern about the use of torture and other cruel, inhuman or degrading treatment or punishment against vulnerable groups, including national and ethnic minorities, asylum-seekers, refugees and non-citizens, and that the Committee has also received information and raised questions about allegations of many related forms of discrimination, xenophobia and related intolerance based on racial, religious, linguistic, minority or ethnic status, or based upon sex, age, disability, sexual orientation, citizenship or other status,

Observing with regret, that discrimination of any kind can create a climate in which torture and ill-treatment of the "other" group subjected to intolerance and discriminatory treatment can more easily be accepted, and that discrimination undercuts the realization of equality of all persons before the law,

Emphasizing that the World Conference, scheduled to take place in Durban, South Africa, in September 2001, will examine racism, racial discrimination, xenophobia and other related problems which can hamper the realization of the rights ensured in international human rights instruments, including the Convention against Torture,

Calls upon all States to incorporate the crime of torture, as defined in article 1 of the Convention, as a specific offence in their domestic penal legislation,

Recommends that all States ratify the Convention against Torture, which is the least ratified of the six core international human rights instruments. In addition, urges all States to enhance the internationally recognized and legally binding framework to combat and prevent discrimination which is found in the six core human rights instruments by achieving universal ratification of these instruments,

Recommends that States take all necessary steps to ensure that public officials, including law enforcement officers, do not apply discriminatory practices and do not manifest contempt,

racial hatred or xenophobia which may lead them to commit acts amounting to torture or ill-treatment against vulnerable groups, in particular ethnic, racial, religious, linguistic or national minorities, asylum-seekers or refugees, or on the basis of any other status,

Stresses that article 10 of the Convention obligates each State party to "ensure that education and information about the prohibition of torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials, and others who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention, or imprisonment". Such educational measures should explicitly address the implications of the fourth purpose contained in the definition of torture ("discrimination of any kind") found in article 1 of the Convention. Such educational efforts would not only help prevent torture in the criminal justice sector, but would help to eradicate intolerance among the broader public as part of the efforts connected to the World Conference,

Emphasizes the vital importance of having transparent and effective official procedures through which individuals can raise complaints of ill-treatment and torture perpetrated on the basis of discrimination, unequal access to justice and related concerns. It is essential that States parties ensure that all alleged victims have access to needed information, support and legal aid, as appropriate. Among the institutions that facilitate such recourse procedures are the courts, as well as an ombudsman, national human rights commission or other related body. The way such institutions address the element of discrimination when examining allegations of torture or ill-treatment should be assessed to identify any need for improving the effectiveness of these mechanisms,

Recalls that an essential element in eradicating racism, racial discrimination, xenophobia, and related intolerance is overcoming impunity. Under the Convention, States are required to bring to justice those responsible for acts of torture or ill-treatment, whether committed against a single individual or a broad group of the population,

Notes, with regard to non-citizens and asylum-seekers, that States parties must ensure that racism, racial discrimination, xenophobia or related intolerance do not result in decisions of deportation to another State where there are grounds for believing that the deportee would be in real danger of being subjected to torture. States should give special consideration to the real risk of torture that may be faced on the basis on an individual's membership in a group that is subject to discriminatory treatment in a State to which he or she may be returned,

Emphasizes that the World Conference offers the opportunity for States and representatives of civil society and non-governmental organizations concerned with human rights to reflect on ways to address most effectively the major problems with regard to racial discrimination and related intolerance and to establish a set of goals for themselves to pursue both nationally and internationally. By devoting attention to the results of racism, racial discrimination, xenophobia and related intolerance and focusing upon appropriate methods of prevention and redress, the World Conference will contribute in large measure to the national and international efforts that are currently being directed towards the suppression of torture and cruel, inhuman or degrading treatment or punishment.

Annex XI

Joint Declaration for the United Nations International Day in Support of Victims of Torture, 26 June 2001

The Committee against Torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture ("the Fund"), the Special Rapporteur of the Commission on Human Rights on the question of torture and the United Nations High Commissioner for Human Rights,

Recalling the decision of the General Assembly in its resolution 52/149 of 12 December 1997 to declare 26 June the United Nations International Day in Support of Victims of Torture,

Recalling also that the General Assembly, recognizing the need to provide assistance to the victims of torture in a purely humanitarian spirit, established the United Nations Voluntary Fund for Victims of Torture to receive voluntary contributions for distribution to victims of torture and their relatives and appealed to all Governments to contribute to the Fund,

Observing that the requests to the Fund for remedy and assistance to victims of torture and their families are ever increasing,

Regretting that torture, an international crime, is still practised by Governments and by other entities exercising effective power,

Reaffirming with dismay that, as affirmed by the Secretary-General, torture is one of the vilest acts to be perpetrated by human beings upon each other,

Exhorting all Governments to eradicate torture and bring to justice torturers everywhere, and reminding everyone that ending torture marks a beginning of true respect for the most basic of all human rights: the intrinsic dignity and value of each individual,

Conscious of the need to emphasize the prevention of torture, as recommended by the World Conference on Human Rights in 1993,

Recognizing that racism, racial discrimination, xenophobia and related intolerance create conditions conducive to torture and have been used to justify torture throughout history,

Noting that the World Conference scheduled to convene in Durban, South Africa, in September 2001 will examine racism, racial discrimination, xenophobia and related intolerance,

Stressing that article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment includes under the definition of torture any act by which severe pain or suffering is inflicted for any reason based on discrimination of any kind,

Recalling that the Special Rapporteur on the question of torture has noted that ethnic differences may contribute to the process of dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place,

Emphasizing that the Committee against Torture has observed, with regret, that discrimination of any kind can create a climate in which torture or ill-treatment of "other" groups can more easily be accepted and that discrimination undercuts the realization of equality of all persons before the law,

Acknowledging and commending the valuable and ongoing work of many Governments, associations, non-governmental groups and individuals in combating all forms of torture,

Paying tribute to those, particularly in non-governmental organizations, who work selflessly to relieve the suffering and assist the recovery of torture victims worldwide, and seek redress for them,

1. *Strongly appeal* on 26 June 2001, on the occasion of the United Nations International Day in Support of Victims of Torture:

(*a*) To all Governments and other entities exercising effective power:

(i) To call an immediate halt to the practice of torture;

(ii) To sanction as soon as possible all persons who have ordered, acquiesced in or practised torture;

(iii) To take all appropriate measures necessary for the prevention of torture within the territory under their jurisdiction or control;

(*b*) To all Governments, intergovernmental and non-governmental organizations and individuals:

(i) To provide as much support as possible to the victims of torture and their families;

(ii) To cooperate, in order to prevent torture, for the establishment of an international mechanism of visits to places of detention by adopting as soon as possible an optional protocol to the Convention against Torture;

2. *Assure* all donors to the Fund:

(*a*) That their contributions are duly and equitably distributed to organizations in the five continents and effectively utilized to provide medical, psychological, social, economic, legal, humanitarian and other forms of assistance to the victims of torture and their families;

(*b*) That their contributions are highly appreciated not only by the victims of torture and their families themselves but also by human rights defenders and organizations;

3. *Strongly appeal* to all donors to the Fund to continue and, if possible, increase their generous contributions to the Fund, preferably on an annual basis;

4. *Urge* the universal ratification, by the year 2005, of the International Covenant on Civil and Political Rights and its Optional Protocols and of the Convention against Torture, including acceptance of the procedures provided for in articles 21 and 22;

5. *Appeal* to all States to keep constantly in mind that the eradication of torture requires not only ratification of the above treaties, but also their effective implementation;

6. *Encourage* renewed educational efforts to prevent torture, including those addressing eradication of torture based upon discrimination of any kind;

7. *Call upon* all Governments and individuals to assess the way in which courts, ombudspersons, national human rights commissions or related bodies address the element of discrimination when examining allegations of torture or ill-treatment, in order to improve the effectiveness of these mechanisms in enabling individuals to raise concerns about any such allegations based on discrimination or unequal access to justice;

8. *Recall* that an essential element in eradicating racism, racial discrimination, xenophobia and related intolerance is overcoming impunity and bringing to justice those responsible for acts of torture or ill-treatment, whether committed against a single individual or segments of the population;

9. *Urge* all States to provide in their domestic law for fair and adequate reparation, including compensation and rehabilitation of the victims of torture;

10. *Urge* all participants at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban to work together against torture, paying due attention to the relationship between discrimination and the practice of torture, and the need to eradicate any such practice as a vital part of the effort to provide remedies to the victims of torture;

11. *Call upon* the United Nations Secretariat to transmit the present Joint Declaration to all Governments and give it the widest possible distribution;

12. *Appeal* to the communications media:

(*a*) To give as wide publicity as possible to this Joint Declaration on 26 June 2001;

(*b*) To enlighten both Governments and peoples about the current situation concerning torture by reporting consistently on that subject.

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